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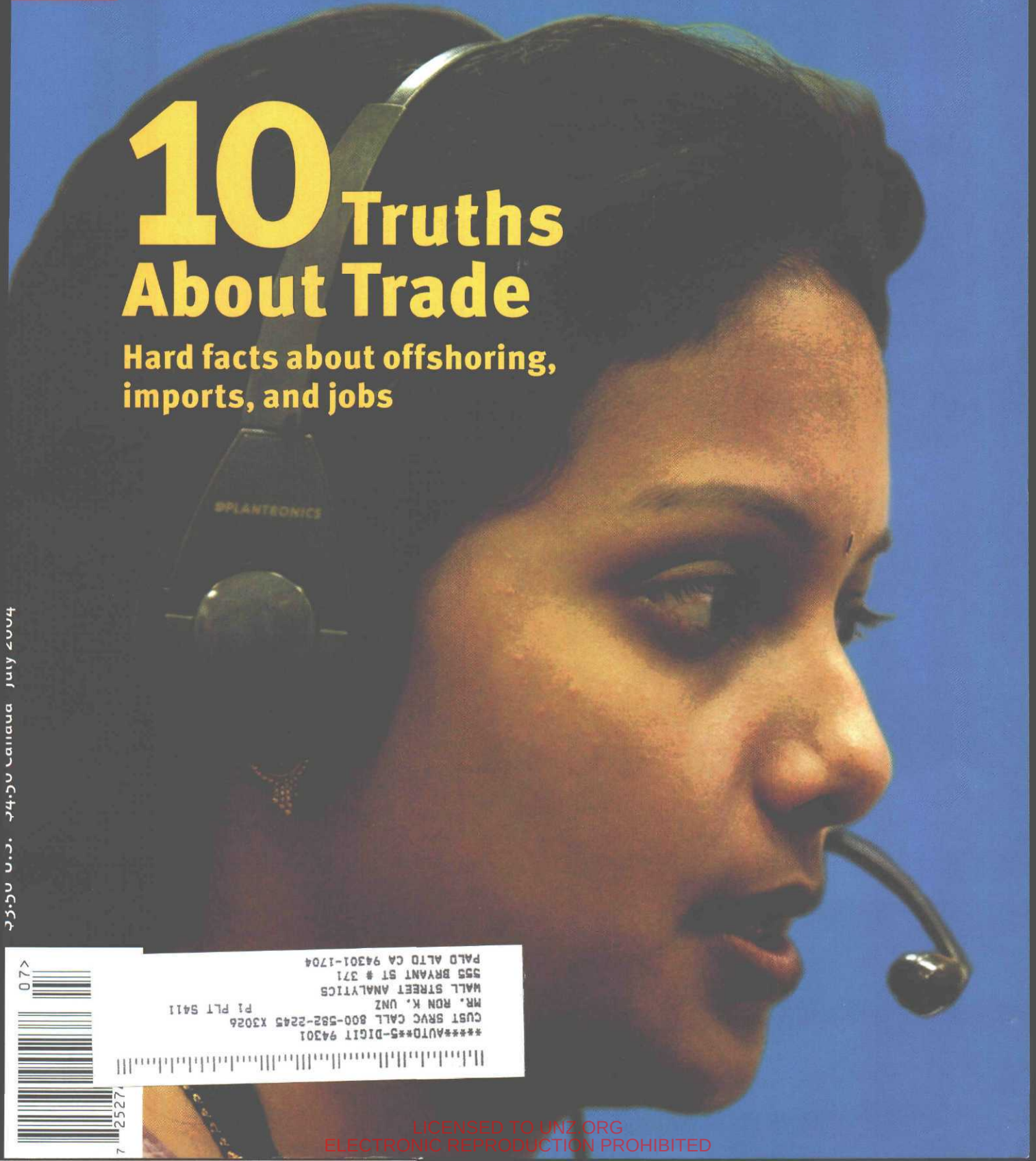

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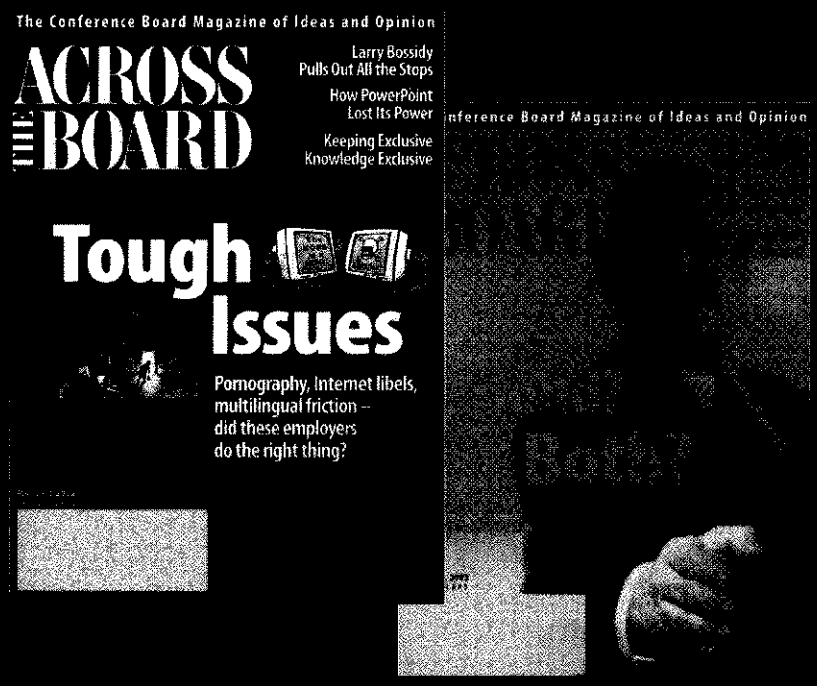
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Free Minds and Free Markets

July 2004
Volume 36, No. 3

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Protectionism in Politics and Prose

As Lou Dobbs could tell you, these are pretty good times to be a protectionist. The CNN host and *U.S. News & World Report* columnist is enjoying a burst of attention for his outspoken and repeated attacks on, as he put it in a typical *U.S. News* piece in March, the "laissez-faire doctrine of free trade [that] has liberated successive administrations, Republican and Democratic, from responsibility for their trade decisions." Chief among the effects of freer trade, charge Dobbs and many others, is the "offshoring" of good-paying American jobs to less developed countries such as India and China.

Such an argument plays particularly well in an election season marked by trade deficits, uneven job growth, and increased fear of foreigners, especially ones willing to work low-wage jobs in the U.S. (Dobbs laments that "Bush advocates a guest worker program for illegal aliens, while Kerry just wants to provide amnesty to many of them.") Like Dobbs, calls for tariffs, taxes on businesses that employ workers in other countries, and other restrictive measures are getting more play than they have in years.

Yet as Brink Lindsey underscores in "10 Truths About Trade," the Dobbses of the world are wrong (page 24). "The overall trend is toward more and better jobs for American workers," writes Lindsey, author of *Against the Dead Hand: The Uncertain Struggle for Global Capitalism*. Not only has the job market kept pace with massive increases in the labor supply, it has done so by creating more managerial and specialized professional jobs. Between 1983 and 2002, notes Lindsey, such "challenging and high-paying positions have jumped from 23.4 percent of total employment to 31.1 percent."

A dozen years ago, it was Ross Perot who complained of the "giant sucking sound" of U.S. jobs being lost to Mexico. Lindsey argues that today's protectionists have made the same mistake Perot did: They've confused "a temporary, cyclical downturn with a permanent reduction in the economy's job-creating capacity....The U.S. economy is not running out of good jobs."

Web Editor Tim Cavanaugh's "*Ulysses* Unbound" (page 50) points to a different peril of protectionism: It seeks to stifle the sort of creativity that revitalizes cultural touchstones. June 16 marks the 100th anniversary of "Bloomsday," the fictional day on which James Joyce's modernist masterpiece takes place. Though one of the most difficult literary texts of all time, *Ulysses* has improbably inspired countless fan communities, re-enactments, and related spinoffs (including a Dutch dance hit). Indeed, as Cavanaugh reports, some 50,000 tourists are expected in Dublin alone to celebrate Bloomsday this year.

All this activity has happened despite the wishes of Joyce's grandson, who regained control over the book's copyright a decade ago and has tried to stifle adaptations he considers "inappropriate." For the moment, James Joyce's fans have the upper hand over his heir. But whether in politics or prose, protectionism, like sex with Molly Bloom, is an ever-present threat.

Nick Gillespie

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- **BARUN MITRA** (India) recent winner of the Templeton Freedom Prize and founder of the Liberty Institute in New Delhi.
- **JAN NARVESON** (Canada) Professor of Philosophy at the University of Waterloo (Ontario, Canada) and author of *The Libertarian Idea*.
- **SUDHA SHENOY** (Australia) Lecturer in Economic History at the University of Newcastle and author of *Underdevelopment and Economic Growth*.
- **MICHAEL CLOUD**
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Editor-in-Chief Nick Gillespie (gillespie@reason.com)

Managing Editor Jesse Walker (jwalker@reason.com)

Senior Editors
Brian Doherty (bdoherty@reason.com)
Charles Paul Freund (cpf@reason.com)
Jacob Sullum (jsullum@reason.com)

Assistant Editor Julian Sanchez (jsanchez@reason.com)

Science Correspondent Ronald Bailey (rbailey@reason.com)

Editorial Assistant Mary Toledo (mtoledo@reason.org)

Art Director Barb Burch (bburch@reason.com)

Photo Researcher Julie Wolf

Web Editor Tim Cavanaugh (tcavanaugh@reason.com)

Webmaster Brian J. Taylor

Reason Express Writer Jeff A. Taylor (jtaylor@reason.com)

Contributing Editors
Peter Bagge, Gregory Benford, James V. DeLong, Glenn Garvin, Mike Godwin, David R. Henderson, John Hood, Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, Mike Lynch, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, Michael Valdez Moses, Charles Oliver, Walter Olson, John L. Pitney Jr., Thomas Szasz, Matt Welch, Cathy Young, Michael Young

Publisher Mike Alissi (malissi@reason.com)

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
Tel: 310-391-2245 Fax: 310-391-4395

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Ronald E. Burr, 703-893-3632
Joseph P. Whistler, 540-349-4042
(advertise@reason.com)

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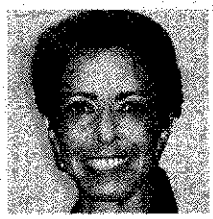

Tama Starr

Jacob Sullum

Will Wilkinson

TAMA STARR says that when she took over the 107-year-old family business, Artkraft Strauss Sign Corp., she didn't give much thought to the company's status as a "woman-owned business"—until, as she recounts in "Confessions of a 'Woman-Owned Business' Owner" (page 32), a bank made it clear that simply running an excellent company wouldn't land her a contract. Starr is the author of several books, most recently *Signs and Wonders* (Doubleday/Currency); she's also been responsible for the Times Square ball drop on 19 New Year's Eves. She says illuminating absurdities in public life gives her "exactly the same kind of thrill as throwing the switch that lights up one of our kinetic light sculptures."

Senior Editor JACOB SULLUM doesn't go to McDonald's much, since there's almost nothing on the menu that fits a kosher diet. Despite that and his general preference for horror movies, he felt compelled to see Morgan Spurlock's anti-fast food polemic *Super Size Me* ("Big Mac Attack," page 55) for a couple of reasons. First, it's a brief for the public health paternalism he regularly attacks—most recently in *Saying Yes: In Defense of Drug Use* (Tarcher/Penguin), now out in paperback. Second, he's in the movie. Ideological differences notwithstanding, Sullum says *Super Size Me* ranks in the middle of films he's seen recently: much better than *Solaris*, but not quite as good as *Mean Girls*.

Philosophy grad student WILL WILKINSON first heard of Gouverneur Morris after taking a group of students from the Social Change Workshop, a summer seminar he runs for the Institute for Humane Studies, to visit Monticello. He mentioned the trip to Christopher Morris, his graduate adviser at the University of Maryland's philosophy department, who launched an unexpected attack on the revered Thomas Jefferson. Morris, it turned out, was a distant relative of forgotten founder Gouverneur and had inherited a family rivalry with the Jeffersons. Wilkinson takes a fresh look at the man he calls "a lens into the process by which the original American institutions got built" in "The Fun-Loving Founding Father" (page 59).

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SHE TOLD ASHCROFT: "Mind your own business."

The Court agreed -- it's up to the states!

Angel McClary Raich has an inoperable brain tumor. After her doctor tried everything to keep her from wasting away, he finally recommended marijuana. It saved her life. What's more it got her out of a wheelchair and back with her husband and children.

But the Attorney General says there's no such thing as medical marijuana -- even though studies show otherwise[1] - and it's legal in 9 states. John Ashcroft has been sending his troops out to bust the sick and dying and their care-givers. He even tried to intimidate their doctors but that's where the Supreme Court drew the line.[2]

Now the 9th Circuit Court of Appeals has joined with Angel Raich.[3] They're telling the Attorney General to butt out.

A TIME-CNN poll shows that 80 percent of Americans support medical marijuana for the seriously ill.[4] Isn't it time for the federal government to catch up with science and the people?[5]

www.CommonSenseDrugPolicy.org, www.DrugWarFacts.org, wwwMedicalMJ.org

Mike Gray, Chair; Robert Field, Co-Chair; Kevin Zeese, President 717-288-0600

[1]"Marijuana and Medicine" Inst.of Medicine, 1999 [2]Walters v. Conant 03-40 [3]Raich v. Ashcroft 9th Cir. No. 03-15481 [4]TIME Nov.4 2002
[5]To find out what you can do to help patients like Angel, contact Americans for Safe Access www.SafeAccessNow.org 1-888-929-4367

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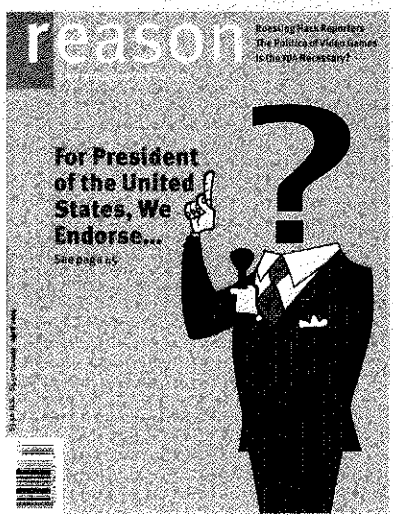

Letters are welcome and should be addressed to

reason
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
fax: (310) 390-8986
letters@reason.com

Regulation for Dummies

We were very disappointed by Todd Seavey's review of *Protecting America's Health* ("Regulation for Dummies," April).

Since it's impossible to detail all of our disagreements in a short letter, we would like to focus on one particular point: The Food and Drug Administration (FDA) is causing far more harm to the health of Americans than it is preventing. It has cost the lives of more than 1 million Americans since 1994 by prohibiting the inclusion in labels and in labeling (literature that accompanies a product at the point of sale) that omega-3 fatty acids can reduce the risk of a sudden-death heart attack by 50 percent to 80 percent. At least 150,000 Americans each year were thus prevented from saving their lives with safe, inexpensive fish oil supplements. One million dead because of FDA censorship of truthful health information on one dietary supplement is a severe harm to the public health, far more than those killed by 19th-century patent medicines.

In 1994 the two of us filed suit against the FDA for violating the First Amendment by prohibiting the inclusion of truthful information concerning four health claims. In 1999 a federal appeals court ruled in our favor, and the FDA declined to appeal to the Supreme Court. Thus this decision, *Pearson v. Shalala*, is the law of the land. Yet for the next two years (until we sued and won again), the FDA continued to prohibit the inclusion of truthful information on the heart- and life-protecting effects of omega-3 fatty acids. In 2001, seven years after our initial suit was filed, the FDA agreed to allow a "qualified" health claim.

The purported 19th-century "free for all" is usually the fallback position of those who approve of FDA controls on foods, dietary supplements, medical devices, and drugs. It is the unrecognized costs, however, such as the FDA's unconstitutional prohibition of truthful information on foods and dietary supplements, that reveal an FDA that does far more harm than good.

Our recommendation is that the FDA be transformed into a certifying agency, so that it can use its standards to certify products for safety and effectiveness, while uncertified products could be marketed with a large-type disclosure that "this product is not FDA-certified" or whatever other warning might be needed.

Durk Pearson and Sandy Shaw
via fax

Todd Seavey replies: Even today, the heart benefits of omega-3 fatty acids are not certain, although the results of three recent studies were promising. (Two of them were hampered, unfortunately, by relying on questionnaires rather than precise measures of fish oil intake.) Talking about omega-3 benefits as if they are certain—and were certain as soon as the first studies came out—is exactly the sort of hasty touting of new studies that drives the largely unscientific dietary supplement industry, including many popular but useless potions for longevity and memory enhancement.

To make a full calculation of the effects that eliminating the FDA would have, we would need to imagine not simply a world in which accurate information reached people more quickly but a world in which products and claims based on every preliminary study and dubious, apparent benefit were rushed to market. That world would not look exactly like the 19th century, but it would look all too much like today's health food stores, expanded to displace the more boring

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but better-tested products of mainstream medicine and agriculture. In such a world more people would be lured away from proper medical treatment to die while hoping for a miraculous tree bark cure for their cancer. I'm all for free speech and the free market, but we must acknowledge that false hope sells and find some way to combat that problem.

Fools for Communism

I hope the rest of **reason** is more accurate than Glenn Garvin's review "Fools for Communism" (April), which references me. Garvin says "Foner... denounces 'the obsessive need to fill in the blank pages of the Soviet era.'"

He is referring to an article I wrote after teaching in Russia in 1990. I did not "denounce" the focus on the Soviet past among the people I met in Moscow at all—I reported it, as part of a discussion of a museum exhibition on one of Stalin's prison camps and, more generally, of how Gorbachev's policy of "openness" had unleashed a wide-ranging discussion of history. As a historian I applaud all efforts to uncover forgotten or suppressed aspects of the past. How this qualifies me as one of the historians supposedly "in denial" about Soviet history is difficult to understand.

It is unclear if this misrepresentation stems from the book under review or is the invention of the reviewer. Either way, it does not reflect well on your generally interesting magazine.

Eric Foner
DeWitt Clinton Professor of History
Columbia University
New York, NY

Glenn Garvin writes, "During World War II, when the Soviet Union and the United States were allied against Hitler, [Christopher] Trumbo's Communist father, Dalton, also named names, secretly pointing the FBI to Hollywood figures he believed were suspiciously anti-war. But there was no suggestion during the [2003] press conference [about Hollywood and the blacklist] that *his* screenwriting Oscar be revoked."

The assertion that Trumbo pointed "the FBI to Hollywood figures he believed were suspiciously anti-war" is a product of Garvin's fecund imagination. There is no evidence to support it. The only reference to Trumbo's speaking to the FBI that I know of can be found in his published letters, *Additional Dialogue: Letters of Dalton Trumbo, 1942–61* (M. Evans & Co.). Anybody sufficiently interested in Garvin's garbled thesis can find enlightenment on page 26 of that volume.

Finally, at the press conference Garvin attended, there was no suggestion that *anybody's* Oscar "be revoked." Revoking Oscars originates with Garvin. And by the way, Dalton Trumbo was given two of them—for motion pictures he wrote using a pseudonym during the time he was blacklisted and unable to find work using his own name.

Christopher Trumbo
Beverly Hills, CA

Glenn Garvin replies: If anything, both the book *In Denial* and my review soft-pedal the tone of Foner's essay, which appeared in the December 1990 issue of *Harper's*. The air of bitter disappointment was palpable as Foner described young Russians who admire Abraham Lincoln but "paint the history of the Soviet era in the blackest hues, reclassifying every top leader between Lenin and Gorbachev as either criminal or incompetent." Worse yet, he wrote, the Russians were turning away from distinctions between bourgeois and socialist ideologies in favor of something he referred to, contempt practically dripping from the quotation marks, as "universal human values." Foner sounded like nothing so much as a jilted paramour as he complained of "this love affair with America."

As for Christopher Trumbo, I am astonished to find myself in agreement with him: Everybody, including his father's leftist admirers, should read Dalton Trumbo's 1944 letter to the FBI reprinted in *Additional Dialogue*. In it, he boasts of having provided the FBI with letters from writers who are "1) anti-war, 2) anti-Semitic, 3) in the process of organizing politically, 4) distributing pamphlets to further their cause and corresponding with persons detained by the Federal government, and 5) of the opinion that the Commander in Chief of American forces is 'the greatest criminal incendiary in history.'" He adds, "I share with the men of your organization a sincere desire to see an end to all such seditious propaganda as criminal slander of the Commander in Chief, defeatism, pacifism, anti-Semitism and all similar deceits and stratagems designed to assist the German cause." He closes by noting that he's including more letters and begging the FBI not to tip off the writers about what he has done, presumably so he can keep ratting on them.

I will concede Christopher Trumbo one technical point. Although he continues to object to the decision to give Elia Kazan a lifetime achievement Oscar, he did not use the word *revoke*. The importance of the distinction eludes me, but I am inclined to be charitable to a man whose father was not only one of Stalin's loudest apologists but also one of J. Edgar Hoover's pet rats. Talk about a childhood of mixed signals.

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Fuming over oil prices; privatizing warfare; outlaw editors; smoking bans and heart attacks; flat-tax perspective; defending divorce; lies and Medicare; discussing disgust

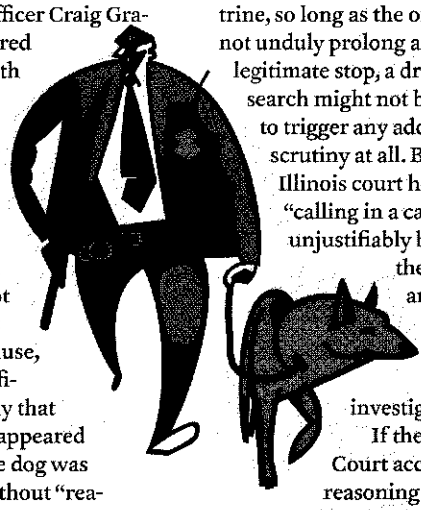
Doggie-style Fourth Amendment

Search 'n' Sniff

Julian Sanchez

IN AN UPCOMING case, *Illinois v. Caballes*, the Supreme Court will decide whether the use of a drug dog to conduct a suspicionless search passes the smell test.

On November 12, 1998, Illinois State Police Trooper Dan Gillete stopped Roy Caballes for driving six miles per hour over the speed limit. When Gillete radioed in the routine traffic stop, fellow officer Craig Graham volunteered to come by with a drug-sniffing dog. The pooch found a hefty stash of marijuana in the trunk. Caballes tried to have the pot suppressed as evidence because, despite the officers' testimony that Caballes had appeared "nervous," the dog was brought in without "reasonable articulable suspicion" that the car contained drugs. While the trial judge allowed the evidence, the Illinois Supreme Court reversed.



In 1983 the U.S. Supreme Court ruled that a canine sniff "does not constitute a 'search' within the meaning of the Fourth Amendment," on the grounds that dog sniffing doesn't require a physical intrusion into a subject's possession and (unlike, say, wiretapping) doesn't involve the exposure of incidental information—it only reveals the presence or absence of contraband. Under that doctrine, so long as the officers did not unduly prolong an otherwise legitimate stop, a drug dog search might not be expected to trigger any additional scrutiny at all. But the Illinois court held that "calling in a canine unit unjustifiably broadened the scope of an otherwise routine traffic stop into a drug investigation."

If the Supreme Court accepts that reasoning when it hears the case in the fall, it could bolster the beleaguered Fourth Amendment rights of motorists, long a casualty of the war on drugs. ◙

Privatizing warfare

Corporate Soldiers

Jesse Walker

ACCORDING TO AN April 8 report in *The Washington Post*, private security companies in Iraq—among them Control Risks Group Ltd., Hart Group Ltd., and Triple Canopy—are pooling their resources, organizing "what may effectively be the largest private army in the world." Employees had been losing their lives, particularly after the spring insurgency began, and the firms found they couldn't rely on the armed forces for protection. So instead they turned to each other.

The blurry line between America's official forces and private military companies has concerned Pentagon watchers for years, with critics such as Ken Silverstein, author of *Private Warriors* (Verso, 2000), arguing that such arrangements allow Washington to intervene abroad without public accountability. Companies such as the Arkansas-based Trojan Securities International and the Oregon-

"So valuable were Reverend [Jim] Jones's political connections...that one can only speculate why he was never asked to join the Carter administration on the cabinet level."

—Thomas Hazlett, "Pleading Jim Jones's Case"

"Napoleon was respected—because he was feared. Jefferson was respected—because he inspired men with a practical vision of liberty."

—Robert Poole Jr., "On the Decline of U.S. Power"

"'Drop your guns or someone might get hurt,' one of the officers yelled. The wives and children complied—but someone was already hurt....John Singer was dead: the result of resisting a court order that he comply with state compulsory schooling laws."

—Gerald M. King, "Man vs. State"

"[Sen. Robert] Taft demonstrated that an anticommunist need not...be a cold warrior and that a foreign policy concerned with preserving internal civil and economic liberties will...be more limited in scope and goals than one whose grandiose purpose is to advance human rights throughout the world."

—Michael McMenamin, "Anticommunist? Yes. Cold Warrior? No."

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based International Charter Incorporated (slogan: "Anytime, Anywhere") have deployed personnel to conflicts from Haiti to Croatia to Sierra Leone. Others offer military training to such nations as Nigeria and Saudi Arabia. Usually such interventions pass unnoticed in the press, unless a firm gets caught in a scandal. (The most notorious wrongdoers were attached to DynCorp in the former Yugoslavia, where some employees were involved in the coerced sex trade—and others were fired in apparent retribution after blowing the whistle.)

But what's starting to happen in Iraq is different. Rather than the government contracting with businesses to perform military services, businesses are contracting with each other for military and intelligence support, with no direction from U.S. or coalition authorities. The private security community in Iraq—about 20,000 people in mid-April, and expected to grow even larger after the planned transfer of sovereignty on June 30—was, by necessity, setting its own policies.

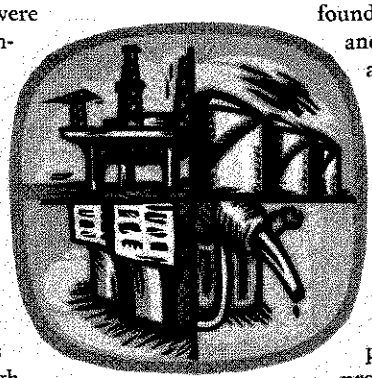
It would be a mistake to describe this as the free market in action. The firms are being paid by the government, are staffed substantially by retired military personnel, and would not be in Iraq in the first place were it not for policies set in Washington. But it is a spontaneous example of what strategists call "networked warfare" (see "Out of the Info Loop," June), and it represents an intriguing turn of events: a moment in which the conflict between Washington and its Islamic enemies becomes a conflict between two sets of nonstate actors.

Fuming over oil prices

Pumping Up

Brian Doherty

HARRIED MOTORISTS across the nation, especially California, have been wondering all spring: Why are gasoline prices so high? Pump prices, *Business Week* alerts us, are "near all-time highs even though the peak summer driving season is months away." As of early April, the national average was $1.76 per gallon, and in California pump prices below $2 had been a fond memory for well over a month. Both drivers and politicians were scrambling to finger culprits in this supposed plunder at the pumps.



Gas prices actually are nowhere near an "all-time high." In inflation-adjusted terms, gas prices were last this high in 1985 but were consistently this high or much higher until the late 1960s. Prices have been consistently lower than they are today only in the past two decades, a golden age of cheap, abundant crude—even as we drowned in conservationist warnings that the ground was running dry.

Chinese demand is growing at an unprecedented rate, and refineries are near capacity with healthy margins. But many of the factors affecting gas prices in America are more political. Just since 2002, the dollar has fallen more than 40 percent against the euro, and a weak dollar means that oil sellers must raise the dollar price of each barrel to make the same amount in real terms.

Once that OPEC crude gets to America, it faces a national market balkanized by varying government mandates for reformulated gasolines that make price spikes in one area, such as California, immune to amelioration from outside sources. Later this year, when New York and Connecticut adopt their own ethanol standards, expect their supply and price situations to become as dire as California's. California Gov. Arnold Schwarzenegger has begged for relief from federal reformulation mandates, but President Bush has not reacted. (California is bound to go Kerry anyway.) And the feds continue buying high and not selling at all, siphoning oil from the current market by filling our strategic petroleum reserves at 20-year-high prices.

The Federal Trade Commission has tried to blame illegal collusion among oil companies for the recent high prices but found no evidence, and California's attorney general is investigating Shell's plan to close a Bakersfield refinery, suspicious that it's an attempt to squeeze supplies and raise profits. Meanwhile, federal and state taxes still amount to around 25 percent of the pump price for gas—more than refinery margins most places.

Change a lede, go to jail

Outlaw Editors

Matt Welch

THE DAY AFTER April Fool's Day, the Treasury Department asserted with a straight face the government's right to criminalize the heretofore First Amendment-protected act of editing an article or book. It is a sign of either how debased our expectations have become or how skillfully the Bush administration can shift the goal posts of public debate that the move was hailed as a victory for free speech.

Last September, Treasury's ominously named Office of Foreign Assets Control (OFAC) made an obscure ruling on a question posed by the Institute of Electrical and Electronic Engineers (IEEE): How did the publishing of scholarly work by Iranian scientists square with the Trading With the Enemy Act and International Emergency Powers Act? OFAC advised that most basic editing—even as little as the "reordering of paragraphs or sentences, correction of syntax, grammar, and replacement of inappropriate words," or the addition of a single illustration—constituted a "service" provided to a citizen of a fully »

Quote

"I absolutely hate taxes, but as a colleague said, I love Virginia more."

—Thomas K. Norment Jr., Republican floor leader in the Virginia Senate, on sponsoring a $4 billion tax increase, higher than the Democratic governor's request

Source

Electronic books have been around a long time now, but the Internet has been making them increasingly collaborative. Project Gutenberg (Gutenberg.net), famous for putting books in the public domain online, uses a "distributed" method of proofreading (organized at pgdp.net) to make sure its content is accurate, with each volunteer proofreading only a few pages of each book. Some authors go further, inviting readers to collaborate in a book's composition. Economist David Friedman's forthcoming *Future Imperfect* is online at patrifriedman.com/prose-others/fi/commented/Future_Imperfect.html; the author invites your suggestions. Columnist Dan Gillmor is doing the same with his book-in-progress *Making the News*, at weblog.siliconvalley.com/column/dangillmor. Readers also produced an audiobook version of Lawrence Lessig's *Free Culture* (Penguin), recording a chapter each at turnstyle.org/FreeCulture.

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Brickbats

When Hyundai wanted to build a test track in California City, California, the local government seized 700 acres of land under a state law allowing it to condemn land that is "urbanized and blighted," even though the land is mostly pristine desert. About those who objected, Mayor Larry Adams said, "I think it's a matter of one or two [who] probably are true believers in the freedom of mankind, blah blah blah, and they don't like eminent domain." ▯

Corrections Canada won't allow prison guards to wear vests that prevent them from being stabbed by inmates. They say it sends a message to prisoners that the guards consider them dangerous. ▯

School officials in Merrillville, Indiana, have banned students from wearing the color pink. They say they've noticed many students are wearing the color, and they fear it may be gang-related. "There is no evidence of gang activity," says Associate Superintendent Michael Berta. "But because of the growing use of the color pink, we decided to be proactive." ▯

In other education news, six teachers in Gwinnett County, Georgia, may have to pay back a total of $30,000 in pay raises. The teachers got the raises after obtaining advanced degrees from a school in Liberia. St. Regis University allegedly granted the degrees for "life experience," charging $995 for a master's and $1,500 for a doctorate. ▯

Audits of New Jersey preschool programs found that money was spent on items including prime beef, fish, cat litter, denture cleaner, and gift certificates. Some of the funds couldn't be accounted for. Of 30 audits, 12 have been referred for possible prosecution. ▯

The Florentine Boar, the centerpiece of Great Britain's oldest public park, stood for more than 100 years before it was damaged during World War II. A planned refurbishing of the park includes a replica of the statue. But in Derby, where the park is located, members of the city council and community activists have called the statue "divisive" and asked that it not be placed in the park lest it offend area Muslims. ▯

If the patrons at MacDinton's *Irish Pub in Tampa, Florida*, don't stop drinking so much, the establishment could go out of business. No, really. The city says it's a restaurant, so it has to get at least 51 percent of its revenue from food or it will lose its alcohol license. The pub (or restaurant) gets 75 percent of its revenue from alcohol. ▯

The Turkish Army has started collecting intelligence on those it suspects might try to undermine the government. These apparently include people who support the European Union, people who support the United States, ethnic minorities, "the socially elite, members of artistic groups and children of wealthy families," satanists, Freemasons, people who meditate, and magicians. ▯

Charles Oliver

› embargoed country and was therefore punishable by up to 10 years in prison.

The decision seemed to violate the 1988 Berman Amendment, which specifically exempted the exchange of "information or informational material" from various trade embargoes. After the outcry, OFAC issued a climbing-down clarification on April 2, saying that all of what the IEEE had described as "editing" would now be permissible. The IEEE congratulated itself for scoring a "First Amendment victory," and news stories based on its press release and OFAC's announcement made it sound like the issue was resolved.

But the same ruling reasserted OFAC's intention to prohibit "substantive or artistic alteration or enhancement" of editorial works originating from Iran, Cuba, Libya, and Sudan—legislative and constitutional restraints be damned. "I think that there's a very good argument to be made that OFAC's regulations, and the manner in which they've been implemented through these rulings, constitute an impermissible prior restraint of publication," says Allan Adler, vice president of legal affairs for the Association of American Publishers. "And historically, prior restraint of publication has been viewed as presumptively unconstitutional." ▯

Smoking bans and heart attacks

Miracle in Helena

Jacob Sullum

LAST YEAR RICHARD Sargent and Robert Shepard, two physicians who had campaigned for a smoking ban in Helena, Montana, announced that their efforts had paid off more dramatically than anyone could have imagined: The ordinance had led to an astonishing 60 percent drop in heart attacks in the six months after it took effect. By the time their study, co-authored by anti-smoking activist Stanton Glantz, was published in the April 5, 2004, issue of the *British Medical Journal*, the drop they attributed to the ban had become 40 percent—not quite as impressive but still remarkable. And still preposterous, even if you accept the anti-smoking movement's claims about secondhand smoke and heart disease.

According to the American Heart Association, secondhand smoke is responsible for about 5 percent of heart disease deaths. Even a smoking ban that completely eliminated exposure

to secondhand smoke (which Helena's didn't, since it did not apply to private residences) could not achieve anything like the effect described by Sargent, Shepard, and Glantz, who in any case made no attempt to measure exposure.

Hedging their bets, Sargent et al. noted that a smoking ban not only reduces exposure to secondhand smoke but also encourages smokers to quit or cut back. But even if Helena's ordinance caused every smoker in town to quit (which it assuredly didn't), it still could not be responsible for a 40 percent drop in heart attacks. According to the U.S. Centers for Disease Control and Prevention, smoking accounts for about 20 percent of heart disease deaths. An immediate 40 percent drop in heart attacks *across the whole population* also implies a much quicker and larger risk reduction than is seen in studies of people who quit smoking.

The study was based on tiny, volatile numbers, averaging seven heart attacks a month before the ban and four afterward. "Due to these small »

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Balance Sheet

Jeff A. Taylor

Golden Shot
The Salk polio vaccine turns 50 years old. For most Americans, the horror that was polio is just something in history books.

Spam Slammer
A North Wales court sentences a man to 20 months in jail for his part in a Nigerian e-mail scam. And if Peter Okoeguale brings $5,000 to prison, he'll get the $12 million an oil minister left in a bank account before he died.

Ogling Google
Google's practice of tying consumers to ads they are actually interested in could bring the company as much as $1 billion in revenue this year.

Snack Flack
According to the *Journal of the American Dietetic Association,* children snacked much more a generation ago. The study found that the percentage that had five or more snacks in a day went from 30 percent in 1973–74 to 8 percent in 1993–94.

Nashville Sounds
College students at 45 schools in the Volunteer State avoid a $120-a-year levy as the Tennessee Board of Regents rejects the recording industry's request for a private tax on broadband use.

Brain Gain
According to research presented at the American Academy of Neurology, gene therapy holds promise for treating Alzheimer's disease. Engineered chemicals known as nerve growth factor seem to slow the debilitating illness.

Snickers Defense
Police in Bournemouth, England, combat rowdiness at last call with chocolate bars. Rather than make arrests when crowds turn out of saloons, police find that handing out candy bars calms drinkers, satiates their hunger, and generally makes it easier for the drunks to get home safely.

Spyware War
Fresh from years of useless anti-spam legislation, Congress turns its gaze toward spyware. Rep. Joe Barton (R-Texas) vows to "cure this cancer on the Internet."

Squeal Estate
The California Department of Real Estate says advertising your home for sale on the Net requires a real estate license.

Dirtiest Laundry
The Internal Revenue Service proposes to amend implementation of the Privacy Act of 1974 so that targets of money laundering investigations will not receive any information about the investigation.

Err America
American Airlines gives 1.2 million passenger itineraries to the Transportation Security Administration and to four other companies looking to do work for the TSA.

Pot Pits
The official, government-approved pot the Canadian health system sends to AIDS and cancer patients is sent back about a third of the time as unusable. Canada is paying about $16,000 (Canadian dollars) an ounce for weed that activists say is nowhere near as good as the black market stuff available for $200 an ounce.

Balloon Not
The Federal Communications Commission fines Howard Stern $27,500 for comparing the human anus to a balloon knot, but it ignores a written complaint about Oprah Winfrey explaining that "tossing salad" means anilingus and that a "rainbow party" involves several women each wearing different-colored lipstick performing fellatio on the same man.

Bananas, Florida
Citizens of Manalapan, Florida, can rest easy now that police cameras will record an image of every car that passes through town. Police also plan to run background checks on the license plates they identify.

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Data

Flat-Tax Perspective

Julian Sanchez

It's easy to conclude the U.S. tax system is pretty progressive if you look only at figures like the share of individual federal income tax paid by the top 20 percent of taxpayers—almost 84 percent! That's pretty hefty, even when you consider that this top quintile also earns almost 60 percent of the income.

But those figures, fondly quoted by many conservatives, leave out quite a bit. When you consider a broad range of state, federal, and local taxes together, the result is barely distinguishable from a flat tax—only without the vaunted simplicity of flat-rate taxation. The bottom 60 percent of taxpayers make 22.2 percent of the income and pay 18.2 percent of the taxes, while the top 1 percent make 19.1 percent of the money and pony up 20.8 percent of the taxes.

Without reform, the relative burden borne by the middle class could soon get heavier still. As Len Burman and other scholars at the Urban Institute have noted, the Alternative Minimum Tax (AMT), originally intended to ensure that the very wealthy paid a certain minimum, is not indexed for inflation. That means the AMT, projected to affect some 4 million taxpayers in 2005, will hit more than 44 million within 10 years. Does that count as "class warfare"?

Income and Tax Shares by Income Quintile

Quintile	Income Share	Federal Income Tax Share	Total Federal State, Local Tax Share
Lowest	3.4%	-1.5%	2.2%
Second	7.0	-0.5	5.5
Middle	11.7	4.5	10.5
Fourth	19.2	13.6	19.0
Top	58.7	83.9	62.6

Source: Citizens for Tax Justice, using an Institute on Taxation and Economic Policy model

› numbers," SUNY cancer epidemiologist Geoffrey Kabat wrote in a letter to the *British Medical Journal*, "the reported difference could easily be due to chance or to some uncontrolled factor."

If Helena's experience wasn't a fluke, something similar should have happened in other jurisdictions with smoking bans. So far, however, no one in New York, Los Angeles, San Francisco, Boston, Chicago, or Dallas has noticed a 40 percent drop in heart attacks. You'd think it would be hard to miss.

Broadcast flag at half-mast

Regulating Radios

Julian Sanchez

CONSUMER GROUPS and consumer electronics companies are already up in arms over federal "broadcast flag" regulations, which will require that, as of mid-2005, new digital video recorders must recognize a copyright watermark in digital television broadcasts and prevent users from copying or sharing content without permission. Now the Recording Industry Association of America is pushing a broadcast flag for digital radio. The industry fears a radio equivalent of TiVo, a high-tech version of the old practice of taping songs off the radio.

A radio TiVo sounds great to Mike Godwin, senior technology counsel for Public Knowledge, one of several groups that has challenged the video broadcast flag. Godwin, a **reason** contributing editor, argues that all forms of the broadcast flag would limit the longstanding right of consumers to save and copy content for personal use and that the case for the radio flag is especially weak. "There is no evidence," says Godwin, "that broadcasters are withholding audio content in the absence of a flag." He also points out that the TV flag is part of an attempt to hasten a shift to digital broadcasting that would allow the Federal Communications Commission (FCC) to recover large swaths of spectrum. There is no such question of spectrum recovery in the case of radio.

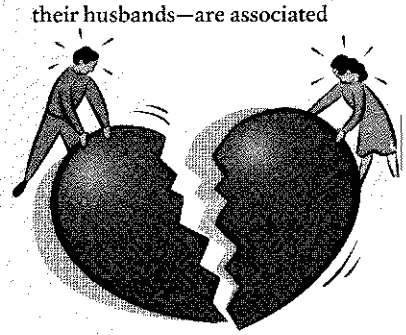
Flag opponents won a qualified victory at an April FCC meeting when the agency decided to issue a "notice of inquiry" into a radio flag rather than proceeding directly with rule making as the music industry had hoped. But Godwin and his allies won't have much time to rest on their laurels: A treaty that the World Intellectual Property Organization was expected to consider in June would require signatory nations to impose still-more-restrictive broadcast flag rules.

Anger, bargaining, acceptance

Defending Divorce

Tim Cavanaugh

WHILE THE DEBATE over gay matrimony has once again placed the "sanctity of marriage" at the center of public policy discussions, a new study from the National Bureau of Economic Research suggests that easy divorce provides some real social benefits—even for couples who stay hitched. The study "Bargaining in the Shadow of the Law," by economists Betsey Stevenson and Justin Wolfers, finds that declines in three social scourges—female suicide, wife abuse, and murder of women by their husbands—are associated



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Discussing Disgust

Julian Sanchez

Martha C. Nussbaum

Many conservative scholars argue that shame and disgust should play central roles in public life. But in her new book *Hiding From Humanity* (Princeton University Press), Martha C. Nussbaum, a professor of law and ethics at the University of Chicago, argues that these sentiments tend to distort public discussion in highly illiberal ways. Assistant Editor Julian Sanchez interviewed Nussbaum in April.

Q: What's wrong with appeals to disgust in public debate?

A: People tend to project disgust properties onto groups of people in their own society who come to figure as surrogates for people's anxieties about their own animality. Such irrational projections have been involved in anti-Semitism, misogyny, traditional Hindu caste hierarchy, and discrimination against homosexuals.

Disgust and shame are inherently hierarchical: They set up ranks and orders of human beings. They are also inherently connected with restrictions on liberty in areas of nonharmful conduct. Recently [University of Chicago bioethicist] Leon Kass has argued that our disgust at the thought of cloning is a good reason to make that practice illegal. Anyone who cherishes the key democratic values of equality and liberty should be deeply suspicious of the appeal to those emotions in law and public policy.

Q: Can a religious believer accept the argument that rejection of our "animality" is irrational?

A: The major religious comprehensive conceptions at least think that while one is on Earth and in a human life, one ought to embrace that life and do well by it. Christianity is at pains to emphasize the full humanity of Christ, precisely to ward off a kind of perverse asceticism. Judaism, my own religion, has never been anti-body; nor, to my knowledge, has Islam. Hinduism has traditionally held a very positive attitude about sexuality and the body. Buddhism does appear to teach a detachment from the things of this world, but at the same time it emphasizes an active compassion for this-worldly suffering. I think that in every doctrine where tendencies to asceticism occur, one can also point to other features that would enable it to accept my views.

Q: What about the role of shame in criminal rehabilitation?

A: I think the late prison reformer Norval Morris—and [philosopher Michel] Foucault—are right that rehabilitation that aims to reform the whole person is too intrusive. What prisons should do is to offer training and opportunities, and then leave it to people to choose to avail themselves of these. If they want to become different, that is up to them and their loved ones.

with the adoption of no-fault or "unilateral" divorces in most U.S. states.

In the 37 states that adopted no-fault divorce in the early 1970s (all but five states now allow unilateral divorce), female suicide has fallen by 5 percent to 10 percent, spousal abuse has dropped by about a third, and murder of wives has declined by about 10 percent. One explanation for these declines is obvious: Wives now have more freedom to exit bad relationships. Stevenson and Wolfers also consider "bargaining and distribution within marriage," in particular the way the threat of easy divorce increases the power of the dissatisfied partner to get his or her (usually her) demands met.

Whether these changes have increased the overall happiness of American marriages is a question even Dr. Phil might find hard to answer. But reducing the number of beatings, murders, and suicides is argument enough for the value of making marriages easier to exit. ▯

Not necessarily the news

Lies and Medicare

Jesse Walker

IF YOU WATCHED the news in Baton Rouge on January 23, 2004, you might have seen a report on WBRZ-TV about the new Medicare law. It was a sunny story, featuring reassuring comments from Health and Human Services Secretary Tommy Thompson and Medicare chief Leslie Norwalk. And it was a fake.

The "reporter," Karen Ryan, was in fact the head of a public relations firm called Karen Ryan Group Communications. The report and others like it were funded and distributed by the federal government, and they were run as ordinary newscasts on stations from Fresno to Tuscaloosa. These facts were uncovered in February by the General Accounting Office, which also announced that the reports contained "notable omissions and other weaknesses." Pundits and Democratic politicians were quick to accuse the White House of conducting, in the words of Sen. Frank Lautenberg (D-N.J.), a "covert attempt to manipulate the press."

The Republican response was that such "video news releases" are hardly new, and that the Clinton administration itself put out 26 of them, including one on Medicare. (Within the GOP, Bill Clinton apparently is considered a benchmark for honesty and sound government policy.)

But the deeper scandal here isn't the government's production of propaganda. It's the media's willingness to distribute it. According to Zachary Roth of *The Campaign Desk*, a weblog affiliated with the *Columbia Journalism Review*, "literally hundreds of stations have run—as news—items 'reported' by Ryan, pushing everything from Excedrin to 'a new ear infection treatment called Ciprodex.'" And whether or not Ryan continues to pose as a journalist, it's almost certain that others like her will. The question is whether stations will continue to put their puff pieces on the air. ▯

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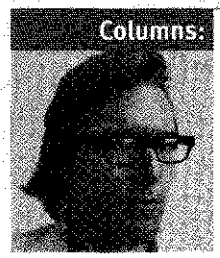

Only Money

Campaign finance reform bites supporters in the rear.

Sierra, a glossy magazine published by the Sierra Club, has a Web site called "The Bush Archives" at sierraclub.org/sierra/bush_archive.asp. There you can find links to 62 original articles criticizing George W. Bush's impact on Mother Nature. Entries include "The Assault on Wild America: Mapping the Bush administration's damage," from March 2004; "W Watch," a recurring feature since May 2003; and a pre-2000 election package rooting for candidate Dubya and his fellow Republicans to lose. "We could win this time," the editors insisted.

Turns out they could lose much more than they feared. The McCain-Feingold campaign finance reform bill—which the Sierra Club lobbied for with great enthusiasm—was finally signed into law in March 2002. That law was upheld by the Supreme Court in its December 2003 ruling *McConnell v. FEC*, and at press time the Federal Elections Commission (FEC) was on the verge of establishing specific new interpretive guidelines for how Americans can legally raise money and make public statements that could affect national elections.

According to the strictest of scenarios drawn up in the FEC's April draft proposal, issue-oriented advocacy groups such as the Sierra Club and the National Rifle Association could suddenly find themselves regulated by the same rules that govern "express advocacy" groups such as StopHillaryPAC or the Committee for a Democratic Majority.

That would mean no more contributions from foundations, corporations, or unions; no more personal gifts larger than $5,000; and no more anonymous donors, among other fund raising restrictions. To avoid this fate, many of these groups—known as 501(c)s, for the section in the tax code that defines their tax-free status—would need to show that they do not "promote, support, attack or oppose" specific candidates in federal elections, which is the standard the Supreme Court's *McConnell v. FEC* decision established to determine whether state political parties and political action committees warrant regulation.

This very column you're reading, in a magazine published by the 501(c)(3) Reason Foundation, could be construed as an "attack" on federal politicians, and therefore limit the foundation's ability to raise and spend money.

These restrictions would smother the rich variety of editorial expression the United States enjoys from its nonprofit sector. "*Sierra* magazine could not mention the president," Sierra Club Executive Director Carl Pope maintains. What about Pope's new book *Strategic Ignorance*, published by the Sierra Club, which attacks Bush's environmental record? "We'd have to pull it off the market and stop selling it," he says. "Ninety-five percent of our speech would be shut down."

Pope was one of a half-dozen heads of nongovernmental organizations to testify at the FEC's mid-April "rule making" hearings, which were intended to pave the way for a May 13 commission vote on regulations that could significantly alter the course of the November elections. "If adopted in anything like the form in which they have been proposed," a coalition including the Sierra Club and 414 other groups wrote in a joint letter to the FEC, the rules "would cause countless nonprofit organizations to drastically curtail their current programs or significantly alter the way in which they raise funds and conduct their activities. The proposed rules would seriously impair vigorous free speech and advocacy."

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For years, newspaper editorial boards and other avowed friends of the First Amendment have scoffed at the argument that restricting political spending would restrict speech. In 2004 McCain-Feingold enthusiasts are discovering that the logic of prohibition can come around and bite them right in the bank account.

"Fundamentally," says Pope, the FEC proposal "effectively amended the First Amendment to say 'Congress shall make no law abridging freedom of speech, except with regard to political candidates in a campaign year.'... It was staggering in its breadth."

Strange as it may seem, you'll hear the same sort of criticism from FEC Chairman Bradley Smith. In direct contrast to Pope, Smith is a Republican and has never supported McCain-Feingold. Yet he has argued that the 501(c)s *should* be addressed in this round of rule making, even though Pope and Sen. John McCain (R-Ariz.) himself are bitterly opposed to it.

Why? Because Republicans are demanding that the FEC immediately place limits on 527s—independent nonprofits, not run by any specific party or federal candidate, that are allowed to raise unlimited "soft money" and spend it freely on political ads in exchange for detailed disclosure. Unlike 501(c)s, these groups can be aimed mainly at influencing elections. There are several hundred of them, mostly Democratic (the biggest dozen combined have raised more than $65 million for John Kerry already, according to the Center for Responsive Politics), so the GOP is keen on turning off the spigot in this election cycle.

But as Smith told a Republican National Lawyers Association convention in March, "Merely because

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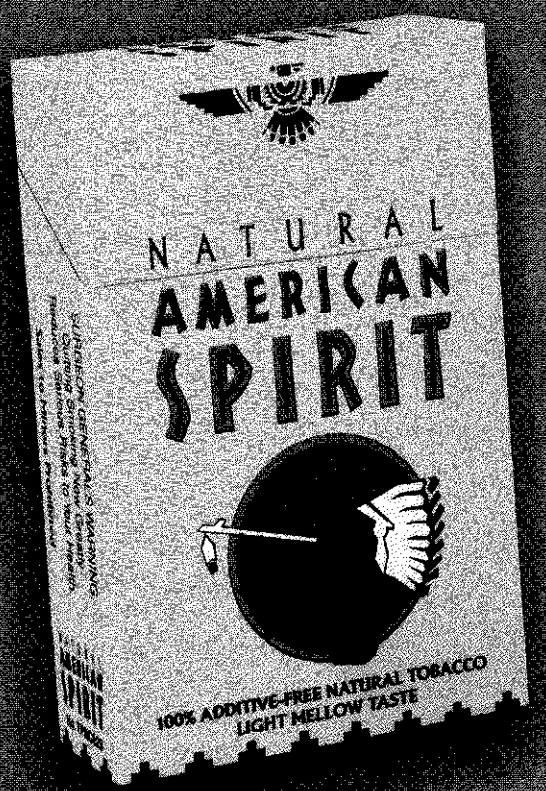

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the Democrats are doing it doesn't make it illegal....These Republicans have decided to depart from their usual moorings, and instead are attempting to make aggressive use of the *McConnell* opinion in an effort to obtain short-term political gain."

So why does Smith want to look at groups like the Sierra Club? His logic is that if the FEC rules and definitions need changing to limit 527s, they should address the activities of some 501(c)s as well. "It seems to me quite clear that a lot of activity would go to 501(c)s if we limit the 527s," he says. The Sierra Club and other nonprofits would rather the FEC lay off the rule making and let both types of organizations continue under current regulations; Republicans want to extend McCain-Feingold to cover 527s while exempting the 501(c)3s; and Smith gleefully calls both sides hypocrites.

Such talk has reformers fuming. McCain and Russell Feingold (D-Wisc.) are introducing a new bill to scrap the FEC and start over, and in April McCain blasted Smith and his fellow commissioners as "stooges of the special interests" who "are trying to undermine this law."

But McCain-Feingold did not discuss 527s (even though such groups were already in existence), nor did it specifically exempt 501(c)s from existing rules. So the FEC is left trying, on one hand, to respond to the political pressure of the moment and, on the other, to resolve the inconsistencies between McCain-Feingold, *McConnell*, and the 1976 Supreme Court decision *Buckley v. Valeo*, which upheld parts of the post-Watergate Federal Election Campaign Act.

For example, *Buckley* says a group qualifies for federal regulation if it engages in the "express advocacy" of supporting or attacking a specific candidate. McCain-Feingold, meanwhile, says state parties and committees qualify for regulation only if they are involved in "federal election activity" (such as get-out-the-vote drives or ads that mention candidates), while *McConnell* prohibits federal officeholders from coordinating closely with 527s and limits political ads aired shortly before an election.

If politically active 527s are treated like political parties, as McCain wants, people completely uninvolved with the lawmaking and campaign fund raising process likely would be judged by McCain-Feingold's "federal election activity" standard designed for political parties, even though the groups are incapable of the quid pro quo corruption the original campaign finance laws were designed to combat. Independent advocacy, which was singled out for protection by *Buckley*, would suffer a devastating blow.

"It would be huge," Smith says. "It would wipe out groups all across the country that have engaged in issue discussion over the years and engaged in political activity."

In the Internet age, such discussion and activity have translated into scores of thousands of Web sites, magazines, and other widely available packages of information. Maybe when they no longer receive *Sierra* magazine in their mailboxes, journalists will understand how campaign finance reform abridges free speech. ▮

Contributing Editor Matt Welch (mwelch@reason.com) writes about media and politics for Canada's National Post.

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Carrying the Torch of Freedom

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Under the Radar

Political correctness never died.

THESE DAYS, TALKING about political correctness in academia makes you sound like a quaint throwback to the 1990s. It seems utterly irrelevant to the post-9/11 era, a threat dwarfed by (depending on whom you listen to) either terrorism or losing our liberties to the war on terrorism. Eric Wasserman, executive director of the Foundation for Individual Rights in Education (FIRE), says many people have a knee-jerk reaction to the very phrase *political correctness*, seeing it as an old story.

But in fact, says Wasserman, the phenomenon is very much alive. On campuses across America, the censorship of speech and ideas in the name of sensitivity continues unabated.

In April, for instance, the faculty council of Oklahoma State University approved a "racial and sexual harassment policy" that amounts to a far-reaching speech code. According to a report in *The Daily O'Collegian*, the policy's definition of harassment includes "a hostile environment that unreasonably interferes with the work or academic performance of those of a particular race, color, ethnicity or national origin," even if such "interference" is "unintentional." It covers "verbal and nonverbal harassment, as well as print and electronic harassment."

The policy does purport to exempt any "presentation or inquiry falling within justifiable academic standards covering course contents and pedagogy." But *justifiable* is a nebulous term, and the policy as a whole is so broad and so vague that it would surely chill the legitimate exchange of ideas, particularly outside the classroom—in student papers, for instance.

Some recent incidents involving student journalism bolster these concerns. Around the same time that Oklahoma State approved its harassment policy, a controversy erupted at Oregon State University after the student paper, *The Daily Barometer*, ran an article by staff columnist David Williams titled "A message from a white male to the African American community." Williams argued that one reason for the social ills disproportionately afflicting blacks is that character and accountability in the black community are undermined by a tendency to rally around prominent African-Americans behaving badly, from O.J. Simpson to singer R. Kelly, currently facing child pornography charges on the basis of a videotape allegedly showing him having sex with an underage girl.

Williams went out of his way to qualify his message, saying he realized his article could be seen as "picking on the worst" of the African-American community and that his judgment on the issue might be suspect because he is not black. "I have never been the victim of racism," he wrote. "I am a white male. This all is very easy for me to say." Williams nonetheless concluded that blacks "need to grow beyond the automatic reaction of defending someone because he or she shares the same skin color and is in a dilemma."

Maybe it was a good column making a necessary point, and maybe it was tired and condescending. But the reaction went far beyond criticism of Williams' arguments or tone. Following a protest rally, *The Daily Barometer* ran a groveling editorial that repeatedly apologized for printing the column and called its publication "an inexcusable mistake." Williams was fired from his position as columnist. At a campus forum held a few days later, university president Ed Gray called the incident a "teachable moment"—the teaching in question, of course, being about diversity and institutional racism, not about freedom of the press. *The Barometer*'s

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Forum editor, Christina Stewart, offered yet another apology for letting the offending article appear. (In a twist, it was subsequently revealed that Williams' column had been inspired by an article on a similar subject by the Pulitzer Prize–winning syndicated columnist Leonard Pitts Jr., who is black.)

This case is one of many recent examples of politically correct censorship of campus journalism. April, apparently, is the cruelest month for student papers: April Fool's Day editions are especially likely to incur the wrath of the sensitivity police. At Carnegie-Mellon University, a joke edition of *The Tartan*, which contained admittedly (and intentionally) offensive racial and sexual humor, resulted in the paper suspending publication for the rest of the semester and agreeing to future content review by the administration.

Thanksgiving, it seems, can be risky too. In 2003 the South Missouri State University student daily, *The Standard*, got in trouble for a cartoon in which a pilgrim on the second Thanksgiving complained to his wife that the Indians "brought corn...again." This joke was deemed offensive to Native Americans. The administration is still investigating *The Standard*'s editor-in-chief, Mandy Philips, and faculty adviser, Wanda Brandon, with possible sanctions pending. It is worth noting that SMSU, unlike Carnegie-Mellon, is a public institution bound, under current law, by the First Amendment.

Litigation by FIRE and other groups has resulted in some victories for free speech. In February of this year, the University of California at Irvine and the University of Colorado at Boulder reversed their bans on "affirmative action bake sales," protests in which cookies were sold at higher prices to Asians and whites than to blacks and Hispanics in order to illustrate the absurdity of awarding extra points to minority college applicants. In March, Shippensburg University in Pennsylvania revised a student code of conduct under which any speech that "annoyed" or "alarmed" someone became a potential target. FIRE and its legal networks had filed lawsuits in both cases.

But larger problems remain. A survey conducted by FIRE last year found that more than half of college students at both public and private institutions believe that a student club espousing traditional beliefs about women's roles should not be allowed on campus; this view is also shared by a quarter of administrators at public universities and nearly half the administrators at private ones. Other results from the survey confirm that when it comes to unpopular views on such issues as abortion or homosexuality, many college students and administrators hold freedom of expression in fairly low regard. One recent trend is for Christian student groups to be denied recognition if they "discriminate" by requiring their leadership to subscribe to the Christian faith.

> On campus, the censorship of speech and ideas in the name of sensitivity continues unabated.

In fairness, there have been some egregious instances of right-wing censorship as well. At the University of Scranton, a Catholic institution, the April Fool's Day edition of the student daily *The Aquinas* was confiscated and the paper itself shut down because of a parody of *The Passion of the Christ*. At Forsyth Community College in Winston-Salem, North Carolina, writing instructor Elizabeth Ito did not have her contract renewed after some students complained about her anti-war comments in class on the day of the ground invasion of Iraq.

But these examples remain few and far between. Two years ago, when "the new normal" was still new, I argued that despite some attempts to suppress "unpatriotic" speech, the greatest threat to free speech on campuses still came from the left. That remains true today.

In April, a few days after football star Pat Tillman was killed in action in Afghanistan, *The Daily Collegian*, the student daily at the University of Massachusetts at Amherst, ran a column by graduate student Rene Gonzalez mocking Tillman as a "Rambo" and an "idiot" who "got what was coming to him." Gonzalez's attack on Tillman sparked widespread outrage and was denounced as "disgusting" and "intellectually immature" by university president Jack M. Wilson.

Nonetheless, Wilson emphasized that Gonzalez had the right to express his opinion, and *The Daily Collegian* stood by its decision to run the column as a matter of commitment to "the backbone of journalism: The First Amendment." The contrast to *The Barometer*'s handling of Williams' column is revealing.

Maybe the editors of the *Collegian* simply have more backbone. Or maybe in the groves of academe, not all offensive speech is created equal. ▪

Contributing Editor Cathy Young (CathyYoung1@cs.com) is a columnist for The Boston Globe.

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Do the Lynndie Hop

How to explain abuses at Abu Ghraib

THERE SHE IS, Miss America for the 21st century: Pfc. Lynndie England, alleged dominatrix of Abu Ghraib prison and evil twin of Pfc. Jessica Lynch, the original poster girl of the Iraq war. However demythologized Lynch's story became, at least she was never seen dragging a prisoner of war on a leash.

England's signature photo—in which she's walking past a line of hooded, naked male prisoners, cigarette dangling from her smirking mouth, one hand giving a thumbs up sign to the camera, the other making a gun shape pointed at digitally blurred genitals—invokes the sort of national shame we haven't experienced since Madonna started affecting a British accent. Of course, England is merely the most photogenic of the captors who have already been dubbed "the six morons who lost the war" by Army wags. She'll have plenty of company in military court.

Whether you're a war supporter or not, the news from Abu Ghraib is grim and dispiriting, gut check time for many of the myths Americans tell about ourselves. And the news is distressingly incomplete: As of press time, the president and the secretary of defense both have warned that the worst revelations—and images—are yet to come. Yes, yes, the vast majority of U.S. soldiers are good and noble people who would never tolerate, much less participate in, such behavior. And it's to the military's credit that last year it began investigating abuse charges relatively quickly and that it seems hell-bent on punishing all offenders, at least if they are of sufficiently low rank.

But there's no denying that the crimes give the press in the Middle East and elsewhere free rein to complain that Bush is "an imperialist, immoral, racist, and crusader president" (*Bahrain Tribune*) and that the Americans have "no respect for the people of Iraq" (*Jordan Times*). That the Red Cross believes up to 90 percent of Iraqi detainees have been arrested "by mistake" doesn't give us any reason to stand up and cheer.

The reaction of the some of the domestic punditocracy is almost as embarrassing as the abuse itself. Rush Limbaugh said that what took place at Abu Ghraib was "no different than what happens at the Skull and Bones initiation," as if hooking blindfolded POWs up to electrical wires or sodomizing them with chemical light sticks was the same as a fraternity circle jerk. Columnist Linda Chavez invoked a *Girls Gone Wild* scenario, fingering gender integration of the troops as the key. Women like Lynndie England, she wrote, "look like they're showing off at some wild party trying to impress everybody with how 'cool' they are." (Unlike Limbaugh, Chavez admitted that the malefactors "dishonored their country and deserve severe punishment.")

The *Orlando Sentinel*'s widely syndicated Kathleen Parker didn't hesitate to collar the real culprits: the sibling auteurs behind the gross-out comedy *There's Something About Mary*. What we witnessed "was 'The Farrelly Brothers Do Baghdad,'" she wrote. "There's not much difference between what those soldiers enacted in Abu Ghraib for digital cameras and 15 seconds of instafame back home and what America's increasingly debased culture embraces as good harmless fun....How else to explain the giddy photographs of young soldiers mugging for cameras and giving the thumbs-up sign beside humiliated prisoners, naked and masturbating? Another Farrelly movie, 'Dumb and Dumber,' comes to mind."

Hmm, how else to explain the abuse? Take a cue from U.S. Army Maj. Gen. Antonio Taguba, who investigated it for the Pentagon. He told the Senate the abuse was due to "failure in leadership...lack of discipline, no training whatsoever and no supervision."

Or take a cue from Commander in Chief George W. Bush, who dropped by the Pentagon shortly after the scandal broke to conduct an unscheduled employee review with Defense Secretary Donald Rumsfeld, who was slow to read even the executive summary of Taguba's report when it first hit his desk. "You are doing a superb job," Bush told Rummy in front of reporters. "Our nation owes you a debt of gratitude." ■

Nick Gillespie (gillespie@reason.com) is editor-in-chief of reason.

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Peter Bagge

FASCISTS HAVE FEELINGS, TOO

OR: "AN ANTI-DEFAMATION LEAGUE OF THEIR OWN," by P. BAGGE '04 (PETERBAGGE@EARTHLINK.NET)

WE VICTORIANS AREN'T OPPOSED TO SEX PER SE...
WE JUST FIND REPRESSION AND DENIAL TO BE A BIGGER TURN-ON.
WHAT'S WRONG WITH GOOD HYGIENE?
VICTORIANS DO IT IN THE DARK
WHO SAYS WE PURITANS HAVE NO FUN?
HAVEN'T YOU EVER BEEN TO A WITCH DUNKING?
OUR TURKEY AIN'T JIVE!
PILGRIM POWER!
I'D LIKE TO STATE FOR THE RECORD THAT I HAVE NOTHING AGAINST CHRISTMAS PAGEANTS...
IT'S JUST THOSE NATIVITY SCENES THAT GET MY BLOOD BOILING!
GOD DOESN'T PAY TAXES
WHAT HIGHER POWER?
SECULAR HUMANISTS: IN NOTHING WE TRUST
DON'T BLAME US FOR THE FALL OF THE ROMAN EMPIRE...
THERE WAS A POWER VACUUM THAT NEEDED TO BE FILLED...
YOU WOULD'VE DONE THE SAME THING!
HUNS ARE PEOPLE TOO
PILLAGE, ANYONE?
PROGRESSIVES EQUATE FASCISM WITH ALL THAT'S WRONG WITH THE WORLD...
THEY TEND TO FORGET THAT WE'RE SOCIALISTS, TOO.
WHAT'S SO EVIL ABOUT TRAINS RUNNING ON TIME?
REMEMBER THE AUTOBAHN
AS A SELF-PROCLAIMED COMMUNIST, I'M OFFENDED BY THE FACT THAT NO ONE ELSE WILL ADMIT TO BEING A COMMUNIST ANYMORE!
NEXT TIME WE'LL GET IT RIGHT
WHERE IS EVERY-ONE?
WE MORMONS ARE COMPLETELY OPPOSED TO POLYGAMY...
IF MY WIFE TOOK ON A SECOND HUSBAND I'D KILL HER!
THAT STUFF ABOUT BLACK PEOPLE WAS JUST A TYPO
JCLDS WE'RE NOT TOTALLY WEIRD
WE FEMINISTS DO NOT BLAME MEN FOR EVERYTHING...
STAY-AT-HOME MOMS ARE CULPABLE, TOO!
WE LAUGH AT SOME JOKES
AS A USED CAR SALESMAN, I OBJECT TO THE FACT THAT EVERY-THING PEOPLE SAY ABOUT US IS TRUE.
EVERY-ONE LOVES A HARD SELL
NO, YOU GET OFF OUR BACKS!

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10 Truths About Trade

Hard facts about offshoring, imports, and jobs

Brink Lindsey

Is globalization sending the best American jobs overseas? If you get your news from CNN's Lou Dobbs, the answer is "of course" and the only real issue is how many trade restrictions should be applied to stem the bleeding.

But the recent scare about "offshoring" is just the latest twist on an inaccurate, decades-old complaint that global trade is stealing jobs and causing a "race to the bottom" in which corporations relentlessly scour the world for the lowest wages and most squalid working conditions. China and India have replaced 1980s Japan and 1990s Mexico as the most feared foreign threats to U.S. employment, and the old fallacy of job scarcity has once again reared its distracting head.

The truth is cheerier. Trade is only one element in a much bigger picture of incessant turnover in the American labor market. Furthermore, the overall trend is toward more and better jobs for American workers. While job losses are real and sometimes very painful, it is important—indeed, for the formulation of sound public policy, it is vital—to distinguish between the painful aspects of progress and outright decline.

Toward that end, and to counter protectionist "analysis" masquerading as fact, here are 10 core truths about global trade and American jobs.

1. The Number of Jobs Grows With the Population

As Figure 1 shows vividly, the total number of jobs in the American economy is first and foremost a function of the size of the labor force. As the population grows, the number of people in the work force grows; then market forces absorb that supply and deploy labor to different sectors of the economy.

Consider all the major events that have increased the supply of labor during the last half-century: the baby boom, the surge in work force participation by women, and rising rates of immigration after decades of restrictionist policies. Consider as well the key developments that have slashed demand for certain kinds of labor: the growing competitiveness of foreign producers and falling U.S. barriers to imports; the shift by American companies toward globally integrated production and the consequent relocation of many operations overseas; the deregulation of the transportation, energy, and telecommunications industries and the wrenching restructuring that followed; and, most important, the many waves of labor-saving technological innovations, from the containerization that replaced longshoremen to the dial phones that replaced switchboard operators to the factory-floor robots that replaced assembly-line workers to the automatic teller machines that replaced bank tellers.

Yet in the face of all this flux, no chronic shortage of jobs has ever materialized. Over those tumultuous five decades, a growing economy and functioning labor markets were all that was needed to accommodate huge shifts in labor supply and demand. Now and in the future, sound macroeconomic policies and continued flexibility in labor markets will suffice to generate increasing employment, notwithstanding the rise of China and India and the march of digitization.

2. Jobs Churn Constantly

The steady increase in total employment masks the frenetic dynamism of the U.S. labor market. Gross changes—total new positions added, total existing positions eliminated—are much greater in magnitude. Large numbers of jobs are being shed constantly, even in good times. Total employment continues to increase only because even larger numbers of jobs are being created.

According to economist Brad DeLong, a weekly figure of 360,000 new unemployment insurance claims is actually consistent with a stable unemployment rate. In other words, when the unemployment rate holds steady—that is, total employment grows fast enough to absorb the ongoing increase in the labor force—some 18.7 million people will

I.T. workers in India providing phone support to U.S. and U.K. customers. ©Brian Lee/CORBIS

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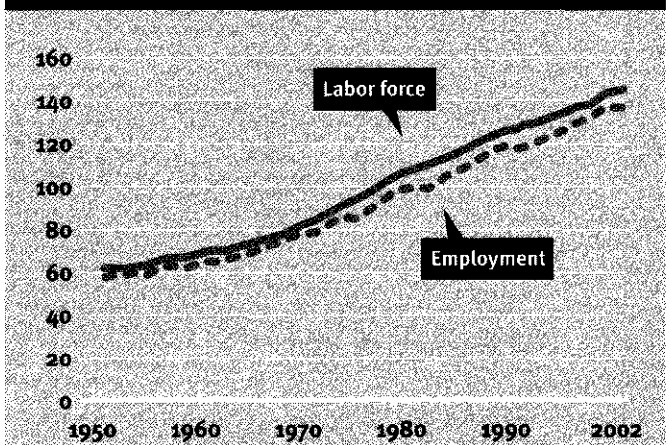
Figure 1: U.S. Civilian Labor Force and Employment (in millions)



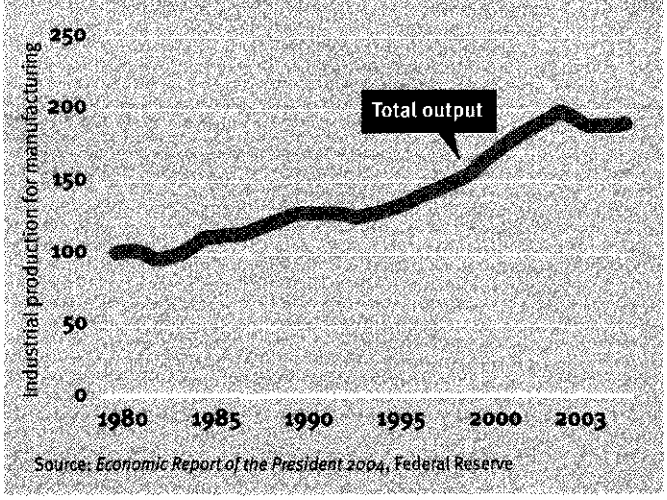
Source: *Economic Report of the President 2004*, Bureau of Labor Statistics

Table 1: Job Turnover (in thousands)

Year	Job Gains	Job Losses	Net Change
1993	29,665	27,032	2,633
1994	30,783	27,621	3,162
1995	31,459	29,079	2,380
1996	32,504	30,061	2,443
1997	33,725	30,757	2,968
1998	34,637	31,805	2,832
1999	35,614	32,924	2,690
2000	35,104	33,143	1,961
2001	32,491	35,442	−2,951
2002	31,691	32,047	−356
Total	**327,673**	**309,911**	**17,762**

Source: Bureau of Labor Statistics

Figure 2: U.S. Manufacturing Output (1980 = 100)



Source: *Economic Report of the President 2004*, Federal Reserve

lose their jobs and file unemployment insurance claims during the course of a single year. Meanwhile, even more people will get new jobs.

More detailed and dramatic evidence of job turnover can be found in Table 1. According to data compiled by the Department of Labor's Bureau of Labor Statistics, total private-sector employment rose by 17.8 million between 1993 and 2002. To produce that healthy net increase, a breathtaking total of 327.7 million jobs were added, while 309.9 million jobs were lost. In other words, for every one net new private-sector job created during that period, 18.4 gross job additions had to offset 17.4 gross job losses.

In light of those facts, it is impossible to give credence to claims that job losses in this or that sector constitute a looming catastrophe for the enormous and dynamic U.S. economy as a whole. It is as inevitable that some companies and industries will shrink as it is that others will expand. Localized challenges and problems should not be confused with national crises.

3. Challenging, High-Paying Jobs Are Becoming More Plentiful, Not Less

The ongoing growth in total employment is frequently dismissed on the ground that most of the new positions being created are low-paying, dead-end "McJobs." The facts show otherwise.

Managerial and specialized professional jobs have grown rapidly, nearly doubling between 1983 and 2002, from 23.6 million to 42.5 million. These challenging, high-paying positions have jumped from 23.4 percent of total employment to 31.1 percent.

And these high-quality jobs will continue growing in the years to come. According to projections for 2002–12 prepared by the Bureau of Labor Statistics, management, business, financial, and professional positions will grow from 43.2 million to 52 million, increasing from 30 percent of total employment to 31.5 percent.

4. "Deindustrialization" Is a Myth

Opponents of open markets frequently claim that unshielded exposure to foreign competition is destroying the U.S. manufacturing base. That charge is flatly untrue. Figure 2 sets the record

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Managerial and specialized professional jobs nearly doubled between 1983 and 2002. These challenging, high-paying positions have jumped from 23.4 percent of total employment to 31.1 percent.

straight: Between 1980 and 2003, American manufacturing output climbed a dizzying 93 percent. Yes, production fell during the recent recession, but it is now recovering: the industrial production index for manufacturing rose 2.2 percent in 2003.

It is true that manufacturing's share of gross domestic product has been declining gradually over time—from 27 percent in 1960 to 13.9 percent in 2002. The percentage of workers employed in manufacturing likewise has been falling, from 28.4 percent to 11.7 percent during the same period. But the primary cause of these trends is the superior productivity of American manufacturers. As shown in Figure 3, output per hour in the overall nonfarm business sector rose 50 percent between 1980 and 2002; by contrast, manufacturing output per hour shot up 103 percent. In other words, goods are getting cheaper and cheaper relative to services. Since this faster productivity growth has not been matched by a corresponding increase in demand for manufactured goods, the result is that Americans are spending relatively less on manufactures. Accordingly, manufacturing's shrinking share of the overall economy is actually a sign of American manufacturing prowess.

Exactly the same phenomenon has played out over a longer period in agriculture. In 1870, 47.6 percent of total employment was in farming. By 2002 the figure had fallen to 1.7 percent. In the future, manufacturing will in all likelihood continue down the trail blazed by agriculture. People who bemoan this prospect don't recognize economic progress when they see it.

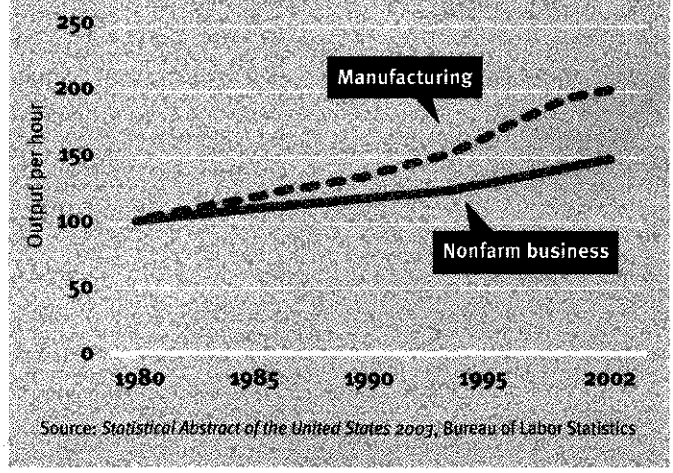
International trade has had only a modest effect on manufacturing's declining share of the economy. It is true that imports displace some domestic production. On the other hand, exports boost sales for American manufacturers. The U.S. has been running a manufacturing trade deficit in recent years, but even if trade had been in balance between 1960 and 2002 the manufacturing share of GDP still would have fallen sharply, down to an estimated 16 percent (as opposed to the actual 13.9 percent). Innovation creates a steady, relentless drop in manufacturing's share of economic activity.

5. Imports Have Not Been a Major Cause of Recent Manufacturing Job Losses

Employment in the manufacturing sector has taken a beating in recent years. Between 1965 and 1990, the total number of manufacturing jobs fluctuated in a stable band between 16 million and 20 million; during the 1990s, the upper limit dropped to around 18 million; but between July 2000 and October 2003 jobs plummeted 16 percent, from 17.32 million to 14.56 million.

Although the losses have been severe, the charge that those jobs were eliminated by foreign competition simply

Figure 3: U.S. Productivity Growth (1980 = 100)



Source: *Statistical Abstract of the United States 2003*, Bureau of Labor Statistics

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The primary cause of the decline in manufacturing's share of GDP is the growing productivity of America's workers. Fewer workers are producing more. That's what economic progress is all about.

doesn't square with the facts. As shown in Table 2, manufacturing imports rose only 0.6 percent between 2000 and 2003. By contrast, manufacturing exports fell by 9.6 percent. In other words, during this period the drop in exports accounted for 91 percent of the growth in the manufacturing trade deficit.

Accordingly, imports played at best a trivial role in the recent sharp decline in manufacturing employment. The main culprit was the worsening domestic market for manufactures during the recent recession—in particular, a big drop in business investment. Between the fourth quarter of 2000 and the third quarter of 2002, total fixed nonresidential investment fell by 14 percent. Looking abroad, it was softening overseas markets, much more than stiffening import pressure, that added further downward pressure on domestic manufacturing jobs. Consequently, anti-trade activists who cite manufacturing job losses as a reason to turn away from trade liberalization couldn't be more wrong. Expanding overseas markets and commercial opportunities for American exporters would be a shot in the arm for manufacturing employment.

6. "Offshoring" Is Not a Threat to High-Tech Employment

In recent months, historical fears about vanishing manufacturing jobs have been compounded by growing anxiety about trade-related job losses in the service sector.

Table 2: U.S. Manufacturing Trade (cumulative from Jan.–Oct.)

	2000 ($B)	2003 ($B)	Change (%)
Exports	571.6	517.0	−9.6
Imports	844.9	849.8	0.6
Balance	−273.3	−332.8	−21.8

Source: U.S. Bureau of the Census

Advances in information and communications technologies now make it possible for many jobs—from customer service calls to software development—to be performed anywhere.

In particular, the offshoring of information technology (I.T.) jobs to India and other low-wage countries has received a flurry of attention. According to a survey of hiring managers conducted by the Information Technology Association of America, 12 percent of I.T. companies already have outsourced some operations abroad. As for future trends, Forrester Research predicted in a widely cited study that 3.3 million white-collar jobs—including 1.7 million back-office positions and 473,000 I.T. jobs—will move overseas between 2000 and 2015.

Adding to the fear, I.T. employment has experienced a significant recent decline. In 2002, according to the Department of Commerce, the total number of I.T.-related jobs stood at 5.95 million, down from a 2000 peak of 6.47 million. Although some of those jobs were lost because of offshoring, the major culprits were the slowdown in demand for I.T. services after the Y2K buildup, followed by the dot-com collapse and the broader recession. Moreover, it should be remembered that the recent drop in employment took place after a dramatic buildup. In 1994, 1.19 million people were employed as mathematical and computer scientists. By 2000 that figure had jumped to 2.07 million—a 74 percent increase. As of 2002, the figure had decreased only slightly to 2.03 million, still 71 percent higher than in 1994.

Despite the trend toward offshoring, I.T.-related employment is expected to see healthy increases in the years to come. According to

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Department of Labor projections, the total number of jobs in computer and mathematical occupations will jump from 3.02 million in 2002 to 4.07 million in 2012—a 35 percent increase. Of the 30 specific occupations projected to grow fastest during those 10 years, seven are computer-related. (See Figure 4 for the fastest-growing computer-related occupations.) Thus, the recent downturn in I.T. is likely only a temporary break in a larger trend of robust job growth.

The wild claims that offshoring will gut employment in the I.T. sector are totally at odds with reality. I.T. job losses projected by Forrester amount to fewer than 32,000 per year—relatively modest attrition in the context of 6 million I.T. jobs. These losses, meanwhile, will be offset by newly created jobs as computer and mathematical occupations continue to boom. The doomsayers are confusing a cyclical downturn with a permanent trend.

7. Globalization of Services Creates Enormous Opportunity for American Industry

Offshoring of I.T. services to India and elsewhere has been made possible by ongoing advances in computer and communications technologies. If those advances indeed pose a threat to domestic I.T. services industries, then it should be possible to trace the emergence of that threat in trade statistics, since offshoring registers as an increase in services imports.

Yet the fact is that the U.S. runs a trade *surplus* precisely in the I.T. services most directly affected by offshoring. In the categories of "computer and data processing services" and "database and other information services," American exports rose from $2.4 billion in 1995 to $5.4 billion in 2002, while imports increased from $0.3 billion to $1.2 billion. Thus, the U.S. trade surplus in these services has expanded from $2.1 billion to $4.2 billion.

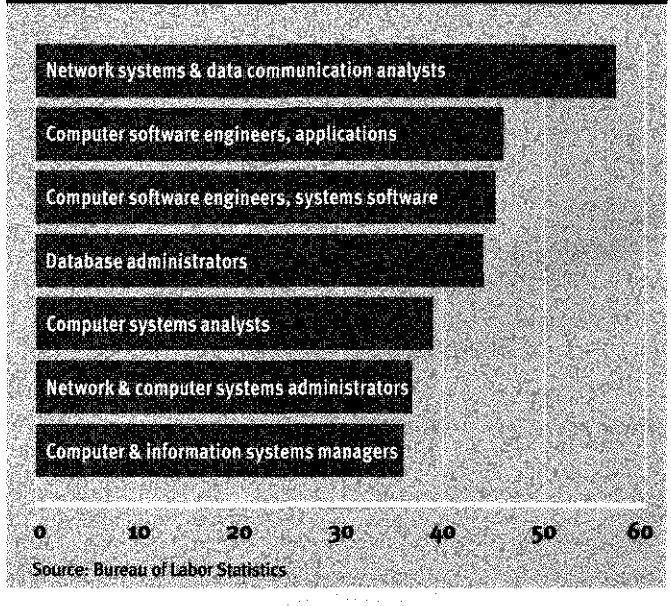
Meanwhile, the same technological advances that have given rise to offshoring are facilitating the international provision of all kinds of services—banking, accounting, legal assistance, engineering, medicine, and so on. The United States is a major exporter of services generally and runs a sizable trade surplus in services. In 2002, for example, service exports accounted for 30 percent of all U.S. exports and exceeded service imports by $64.8 billion. Accordingly, the increasing ability to provide services remotely is a commercial boon to many U.S.-based service industries. Although some jobs are doubtless at risk, the same trends that make offshoring possible are creating new opportunities, and new jobs, throughout the domestic economy.

8. Offshoring Creates New Jobs and Boosts Economic Growth

Although offshoring does eliminate jobs, it also yields important benefits. To the extent that companies can reduce costs by shifting certain operations overseas, they are increasing productivity. The process of competition ultimately passes the resulting cost savings on to consumers, which then spurs demand for other goods and services. Whether caused by the introduction of new technology or by new ways to organize work, productivity increases translate into economic growth and rising overall living standards.

In particular, offshoring encourages the diffusion of I.T. throughout the American economy. According to Catherine Mann at the Institute for International Economics, globalized production of I.T. hardware—that is, the offshoring of computer-related manufacturing—has accounted for 10 percent to 30 percent of the drop in hardware prices. The resulting increase in productivity encouraged the rapid spread of computer use and thereby added some $230 bil-

Figure 4: Projected Growth Rates for Computer-Related Occupations, 2002–2012 (in percent)



Source: Bureau of Labor Statistics

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Again and again, serious voices have raised the cry that the sky is falling. It never does. The root of their error is always the same: confusing a temporary, cyclical downturn with a permanent reduction in the economy's job-creating capacity.

lion in cumulative additional GDP between 1995 and 2002.

Offshoring offers the potential to take a similar bite out of prices for I.T. software and services. Those price reductions will promote the further spread of I.T. and new business processes that take advantage of cheap technology. As Mann notes, health services and construction are two large and important sectors that today feature low I.T. intensity (as measured by I.T. equipment per worker) and below-average productivity growth. Diffusion of I.T. into these and other sectors could prompt a new round of productivity growth such as that provoked by the globalization of hardware production during the 1990s.

9. The Digital Revolution Has Been Eliminating White-Collar Jobs for Many Years

The attention now being paid to offshoring creates the impression that it is an utterly unprecedented phenomenon. But the very same technological advances that are making offshoring possible have been eliminating large numbers of white-collar jobs for many years now.

The diffusion of I.T. throughout the economy has caused major shakeups in the job market during the last decade. Voicemail has replaced receptionists; back-office record-keeping and other clerical jobs have been supplanted by computers; layers of middle management have been eliminated by better internal communications systems. In all these cases, jobs are not simply being transferred overseas; they are being consigned to oblivion by automation and the resulting reorganization of work processes.

The increased churn in white-collar jobs shows up in the Department of Labor's statistics on displaced long-tenured workers, defined as workers who have lost jobs they held for three years or more (Figure 5). During the 1981–82 recession blue-collar workers bore the brunt of long-tenured displacement, but by 1991–92 more than half of the long-held jobs lost were white-collar. Even in the better years that followed, innovation and job churn continued to displace white-collar workers at a higher rate than during the 1981–82 recession.

Offshoring is merely the latest manifestation of a well-established process. The only difference is that, with offshoring, I.T. is facilitating the transfer of jobs overseas. In either case, domestic jobs are lost to technological progress and rising productivity. Why is this downside taken in stride when jobs are eliminated entirely yet considered unbearable when the jobs are taken as hand-me-downs by Indians and other foreigners?

10. Fears That the U.S. Economy Is Running Out of Jobs Are Nothing New

Because of the recent recession, the U.S. economy has suffered from a shortage of jobs, as evidenced by the rise in the unemployment rate. There is a natural temptation under these conditions to fear that this temporary setback is the beginning of some permanent reversal of fortune, that the shortage of jobs is here to stay and will only grow worse.

To calm such fears, it is useful to recall that similar anxieties have surfaced before. Again and again, over many decades, cyclical downturns in the economy have prompted predictions of permanent job shortages. And each time, those predictions were belied by the ensuing economic expansion.

Back in the 1930s, the brutal and persistent unemployment caused by the Great Depression gave rise to theories of "secular stagnation." A number of leading economists—including, most prominently, Harvard's Alvin Hansen—argued that declining population growth and the increasing "maturity" of the industrial economy meant that we could no longer rely on private-sector job

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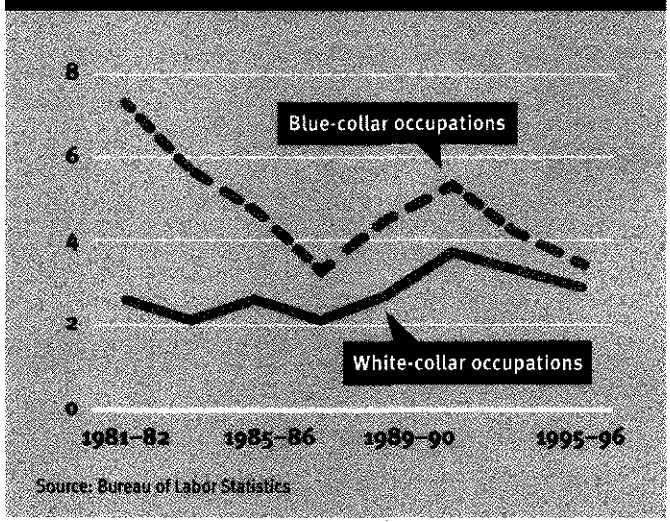
creation to provide full employment. The stagnationist thesis eventually fell out of fashion once the postwar economic boom gathered steam.

The return of higher unemployment in the late 1950s and early '60s led to a revival of the stagnationist fallacy, this time in the guise of an "automation crisis." The ongoing progress of factory automation, combined with the growing visibility of electronic computers, led many Americans to believe, once again, that the economy was running out of jobs. During the 1960 presidential campaign, John F. Kennedy, who ran on a pledge to "get the country moving again," warned that automation "carries the dark menace of industrial dislocation, increasing unemployment, and deepening poverty." The American Foundation on Automation and Unemployment, a joint industry-labor group created in 1962, claimed breathlessly that automation was "second only to the possibility of the hydrogen bomb" in its challenge to America's economic future. For the record, U.S. employment in 1962 stood at 66.7 million jobs—roughly half the current total.

In the early 1980s, the coincidence of a severe recession and a string of competitive successes by Japanese producers at the expense of high-profile American industries sparked predictions of the imminent "deindustrialization" of the American economy. As financier Felix Rohatyn complained, in a fashion typical of the time, "We cannot become a nation of short-order cooks and saleswomen, Xerox-machine operators and messenger boys....These jobs are a weak basis for the economy." Along similar lines, Sen. Lloyd Bentsen (D-Texas) fretted that "American workers will end up like the people in the biblical village who were condemned to be hewers of wood and drawers of waters." It should be noted that U.S. manufacturing output has roughly doubled since 1982.

In the early 1990s, another recession resulted in yet another job shortage scare. Ross Perot won 19 percent of the presidential vote in 1992 with a campaign that, among other things, railed against the "giant sucking sound" of jobs lost to Mexico and other foreign countries. That same year, Pulitzer Prize–winning journalists Donald L. Barlett and James B. Steele published a widely discussed jeremiad, *America: What Went Wrong?*, about the decline and fall of the country's middle class. That hand wringing was followed in short order by one of the most remarkable expansions in American economic history.

Figure 5: Displacement Rates for Long-Tenured Workers (in percent)



Source: Bureau of Labor Statistics

Again and again, serious and influential voices have raised the cry that the sky is falling. It never does. The root of their error is always the same: confusing a temporary, cyclical downturn with a permanent reduction in the economy's job-creating capacity.

In recent years, many Americans have lost their jobs and suffered hardship as a result. Many more have worried that their jobs would be next. There is no point in denying these hard realities, but just as surely there is no point in blowing them out of proportion. The U.S. economy is not running out of good jobs; it is merely coming out of a recession. And regardless of whether economic times are good or bad, some amount of job turnover is an inescapable fact of life in a dynamic market economy.

This fact cannot be wished away by blaming foreigners, and it cannot be undone by trade restrictions. The innovation and productivity increases that render some jobs obsolete are also the source of new wealth and rising living standards. Embracing change and its unavoidable disruptions is the only way to secure the continuing gains of economic advancement.

Brink Lindsey (blindsey@cato.org) is a senior fellow at the Cato Institute and director of its Center for Trade Policy Studies. He is the author of Against the Dead Hand: The Uncertain Struggle for Global Capitalism (John Wiley & Sons). This article is based on a longer paper published by the Cato Institute, available online at www.freetrade.org/pubs/briefs/tbp-019.pdf. Sources for all the figures in this article are available in the original Cato study.

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Confessions of a "Woman-Owned Business" Owner

How I learned to love quotas

Tama Starr

WELL, I FINALLY did it. I bit the bullet and got certified as a WOB: a woman-owned business. It took a roots-up, religious-type conversion—I'd walked in darkness, then I saw the light. And now that I am a proud—or do I mean "humble"?—official victim, my company is entitled to all kinds of preferential treats. Whether ordained by law, as in government contracting, or as an example of aggressive good-guy-ism in the P.R.-conscious private sector, or even as a hopeful prophylaxis against employee or shareholder lawsuits, a passel of lucrative work is reserved for those with the best-crafted claims to prior oppression.

Businesswoman tied to railroad tracks ca. 2000, © CORBIS

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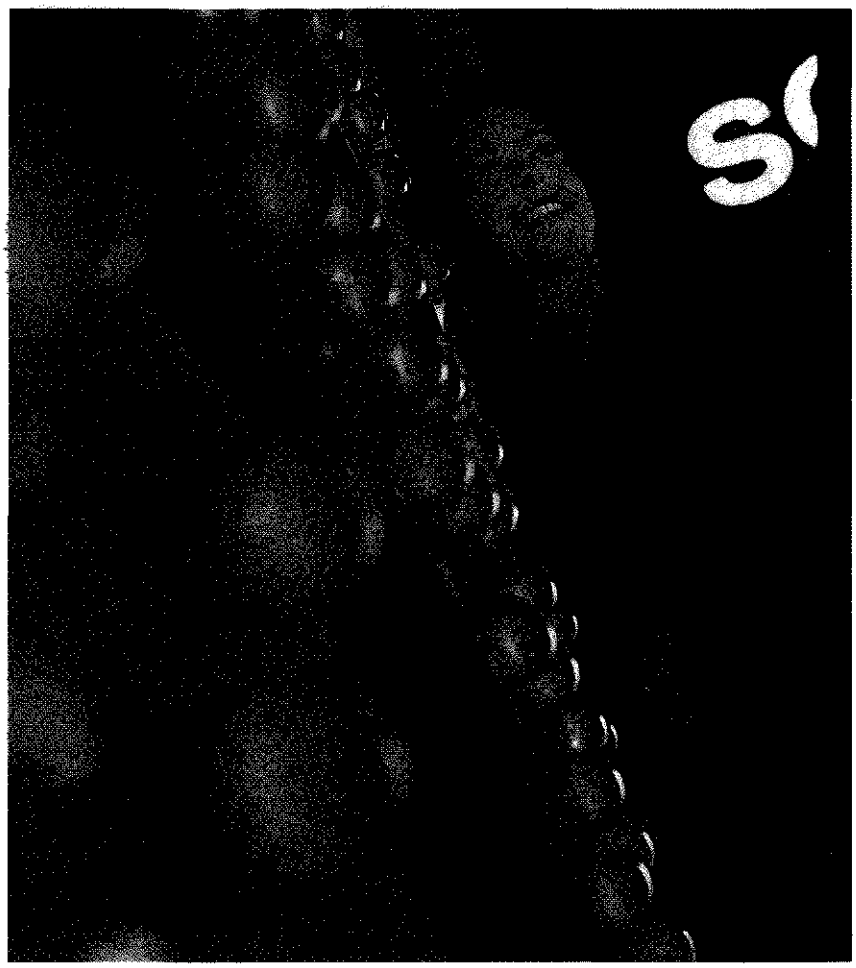

Well-wishers had been after me to go WOB for years, but I refused. Until my revelation, I regarded set-asides as strictly a pat on the head for second-raters. My company, Artkraft Strauss, has been providing signs and outdoor advertising—and paying taxes—since 1897. We'd never imagined ourselves qualified for charity. Our firm gets and keeps customers by fulfilling their contracts, not by invoking their pity. Besides, using sex to get work smacks of a profession even older than sign building. The whole endeavor struck me as disreputable.

But then I realized I was a victim of something even more pernicious than discrimination: pride.

My chief of operations, Jimmy, put the matter into perspective. "What are you, nuts?" he asked, reminding me of how many hoops we've jumped through and rings we've kissed over the years to get jobs. "How's this different?" he wanted to know. "If a job is set aside for guys named Jimmy, my name is Jimmy, I'll take it!" Jimmy was right: Business is business.

A bank's name change provided the tipping point. We sign people love bank mergers. Every sign, canopy, directory, ATM, teller cage, and nameplate has to be replaced—sometimes, in the spirit of the famous Asiatic Fire Drill, overnight, per schedules set forth in the new company's new charter.

This particular changeover involved nearly 1,000 branches in five states. And as I learned when my phone started ringing off the wall with joint-venture pleas from companies I'd never heard of, the taking-over bank had a "utilization rate" of 18 percent. That is, nearly one-fifth of the money spent on construction work would go to WOBs or MBEs (i.e., minority business enterprises; presumably for reasons of euphony, minority-owned businesses generally are called MBEs rather than MOBs). Given how rare such businesses are in the sign trades, at least here in the Northeast, this cake had been baked for me.

Indeed, at the pre-bid conference, the bank's construction consultants were thrilled to see a genuine WOB among the bidders. Apart from the responsibility of physically reconfiguring a thousand banks, they had the head-scratching duty of coming up with the magical 18 percent of oppressed beings.

Their faces fell, however, when they learned I lacked certification. It turns out that it isn't enough to *be* a WOB; one has to be an *officially certified* WOB. The contract was to be awarded in only 10 days, and all the paper had to be in place. But state certification can take six to eight months, they told me, because of the volume of applicants and the demanding nature of the process.

Not to worry, I told them.

While Jimmy and his crew worked on the bid, I worked on the red tape. Getting certified as a WOB is something like getting certified insane: It takes time and talent. As I filled out forms and assembled documentation, I wondered how people who are authentically disadvantaged—or who may not have certified public accountants and English majors on staff—manage it. Anyone who can produce three years of audited financial statements, five years of income projections, a sheaf of valid "Rated-A" insurance certificates, answers to stacks of multiple-choice and essay questions, a book of "minority utilization reports," and a portfolio of supplier and customer references, bank references, and character refer-

Tama Starr

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ences probably qualifies for a $100 million line of credit, if not an MBA.

In went the bid, marked "Certification Pending," and into the bowels of the New York State Division of Human Rights went the WOB application.

Undercover Brothers

Not 36 weeks but a mere 36 hours later, the Division of Human Rights called to schedule my interview to complete the process. How did I accomplish this feat? In an example of the old-fashioned "networking" that affirmative action is supposed to obviate, a confederate at my insurance company called a counterpart whose sister-in-law works in Albany, and our application miraculously migrated from the bottom of the pile to the top. But hey, by now I wanted the job.

The prospect of an investigator's coming in to establish my female bona fides evoked the image of a burly guard out of a 1950s Women's House of Detention movie marching me into the ladies' room and demanding to see the cut of my undergarments. Instead, the investigator turned out to be a grave young man attired in a three-piece suit with Edwardian collar and gold watch fob. He requested my company's original charter and certificate of incorporation; all minutes and bylaws and amendments from inception to date; all stock certificates issued, canceled, and outstanding; and the factory's original certificate of occupancy—a complete set of century-old documents, much of which I managed to produce by sheer luck. The investigator took careful note of my office décor, plants and curtains evidently witnessing more in my favor than cordovan leather and sports memorabilia would have.

What he was really looking for, he explained, was uncles and brothers hiding under the desk. "You'd be surprised," he told me flintily, "how many people try to put one over on us."

No, I wouldn't. Not with all those set-asides in the offing. Add the 10 percent price bonus the designated oppressed are entitled to charge—"price evaluation adjustment," in federal procurement-speak—and the incentive to fudge becomes overwhelming.

Set-asides and "evaluation adjustments" are as pervasive at the big-business end of the private sector as they are in government contracting. Expensive and inefficient these programs may be, but lawsuits are worse. The best defense against discrimination claims, corporate officers are constantly told, is an explicit, detailed, and overarching "affirmative action program" respecting hires, fires, and contracting. Point to this program, and a bevy of bugbears, from disaffected employees to muckraking journalists, will disappear. Besides, it's good P.R., and it allows corporate policy makers to feel good about themselves. They're entitled to some self-esteem too.

These incentives give rise to preferences of mind-boggling complexity. Consider the "utilization chart" from a bid that came across my desk. It's for $9.5 million worth of work at a laboratory in Princeton, New Jersey. The categories can be sliced and diced indefinitely, creating a dazzling array of permutations. They may specify non-Dominican Caribbeans or non-Korean Asians, disabled people of various stripes, or inhabitants of selected neighborhoods.

The utilization rate for suppliers of "No. 1 Diesel And No. 4 Fuel Oils" adds up to 300 percent, a footnote explains, because "incumbent supplier is a disadvantaged, women-owned, HUBZone small business." (A HUBZone small business is one in a "Historically Underutilized Business Zone.") Try competing with that!

Getting certified as a WOB is something like getting certified insane: It takes time and talent. As I filled out forms and assembled documentation, I wondered how people who are authentically disadvantaged manage it.

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I suppose it's not so different from the old days, when the incumbent supplier was apt to be the project manager's brother-in-law—but it certainly isn't an improvement. The old-time project manager wasn't *forced* to hire his brother-in-law, and he might even have had a chance of exercising some quality control over him. In this new, desperate rush to hire one-eyed Central Asians from south of the railroad tracks, price and quality necessarily weigh second at best.

My investigator congratulated me on passing his tests, apologized for their complexity, and shook my hand. My WOB documentation came through the next day. To my disappointment, it was not the fancy, frameable certificate dripping with ribbons and seals that I believed all my effort and angst—not to mention my newfound oppressed status—entitled me to, but just a faxed letter from the New York State Division of Human Rights.

Why'd We Wait?

It's still difficult for me to grasp just what is so hapless about us WOBs and MBEs that we merit entire taxpayer-funded bureaucracies to handhold us through the process of participating in the U.S. economy. According to the U.S. Census Bureau's 1997 Economic Census, the latest for which comprehensive data are available, both women-owned and minority-owned businesses are growing at a rate more than four times the national average. Between 1992 and 1997, the number of MBEs grew by 33 percent and the number of WOBs grew by 37 percent, while the total number of firms grew by only 7 percent.

In 1997 women owned 10.1 million American businesses (up from 6.4 million in 1992), or 46 percent (up from a third) of all domestic firms. They employed more than 18 million people (up from 13 million five years earlier), or one worker in seven, generating $2.3 trillion in revenues (up from $1.6 trillion). Similarly, revenues of the nation's 2.8 million minority-owned firms (up from 2.1 million in 1992) rose 60 percent, to $335.3 billion, while revenues for U.S. firms as a whole—an aggregate that includes these high achievers—increased by just 40 percent.

Growth rates during the previous five years were comparable, and nothing suggests that they have slowed down since. Clearly these sectors are dusting the rest of the economy. In fact, these stunning rates of expansion would be even greater if the Census Bureau hadn't decided in 1997 to change the way it defines MBEs and WOBs, omitting entire categories of firms that were previously counted. Publicly traded companies were dropped, along with firms whose successful, qualifying founder gave up equity to raise additional capital for growth.

It's impossible to say how much MBE-WOB growth is driven by "utilization goals" and set-asides. A contrary theory holds that old-fashioned prejudice, glass ceilings, and corporate inflexibility—the nexus of oppression—do more to stimulate minority and female entrepreneurship than all the set-asides combined. New business founders are preponderantly impatient refugees from the establishment.

Hopefully not too impatient. My certification trials were not yet over: I had yet to be named to the customer's "Approved M/WBE Vendor List," for which the state certification is only a prerequisite. To this end, the bank summoned me to an interview at its headquarters across town. I asked my assistant to call me a cab. "I'm taking a limo to Park Avenue," I told her, "to get us approved as oppressed persons." She rolled her eyes.

In the bank's burnished conference room I

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faced a photogenic board of equality facilitators that looked like a magazine ad for Your Friendly Utility Company: three men and three women, one from each of the currently approved minority groups. Big corporations maintain entire departments to monitor employee racial balance and vendor affirmative action compliance, so I wasn't surprised that the bank's don't-call-it-quotas crew reflected those ideals. But they already had all my information: the same financial statements, the same business and personal and bank and insurance references I'd submitted to the state. So what was left for them to administrate but my attitude?

Which was sorely tried. I felt like a criminal waiting to be discovered. The whole setup bore an unfortunate resemblance to a parole board hearing.

I knew I was a fraud, participating in a charade for which Adam Smith should have ordered the whole lot of us taken out and shot. At the same time, I was taking lightly the principles that provided not only their livelihood but the justification for their existence. Trapped between my conscience and the wrath of scorned bureaucrats, my future appeared foreshortened.

Still, the first part of the meeting reduced me to a confused state of complacency. I'm used to competing for jobs, not being helped over the finish line and shown how to fill out payment requisitions. The nice people explained the advantages of being a WOB in such a way that it hardly seemed a boondoggle. After all, they told me, the contractor has to be able to perform the work; getting one's company on "approved vendor" lists is no different from any other form of marketing. Marketing, they explained, is the use of various methodologies to promote one's products or services. They paused for questions.

I'm familiar with the concept of marketing, I told them.

Oh yes, they said, recalling my hundred years in the sign business. They were amazed, they said, by the age of my company. The vast majority of WOBs and MBEs, they told me, are start-ups.

"You don't say," I said. Lulled by all the baby talk, I failed to see where this might be going.

Then came the stumper.

"Why didn't you do this before?" one of them asked me.

"Do what?" I asked, feeling the trap closing.

"You could have applied for this program nine years ago," she said—rather menacingly, I thought. "Why did you wait until now?" Six expectant pairs of eyes, the whole Rainbow Inquisition, awaited my answer.

That's it, I thought. The jig is up. I'm busted. Trapped. The word will go out to all the banks, and I'll never get another bank job. Or a letter of credit. Or an ATM card. How will I explain this to Jimmy and the boys in the shop?

Then, revelation! I know what I'll do, I thought: I'll come clean. Tell the truth. Throw myself on their mercy. (They may like that.)

"In the past, I was philosophically opposed to it," I admitted carefully.

"And now?"

Gulp. "I consider that I was being naive."

My confession evidently satisfied them. It even invited their confidence: For the rest of the meeting they described their frustration at the shortage of applicants. Even they can see that this is a program where administrators outnumber clients. I promised to recommend some if I should think of any.

The Wonder of Womanship

In the end, the bank job was divided among six companies. (There's your 18 percent "utilization rate.") And as with any construction job, if we survived it and even got paid, we considered ourselves geniuses.

So far the principal benefit of my new WOB status is a clutch of complimentary subscriptions to minority- and woman-owned business magazines. Soft-core S&M for the affirmative action set, they feature photos of silver-haired old-boy executives grinning weakly while presenting excellence awards to entrepreneurs who wear their minorityhood and womanship like earned badges of honor.

But WOB isn't just about tangible benefits. It's so much more. I now feel a part of something larger than myself: the great chain of being that tumbles from the well-meaning, through the impractical, to the absurd—replacing the dismal script of capitalism with a delightfully random set of entitlements and rewards. ▪

Tama Starr (tstarr@tiac.net) is CEO of the Artkraft Strauss Sign Corporation in New York City. Her latest book is Signs and Wonders: The Spectacular Marketing of America (Doubleday/Currency).

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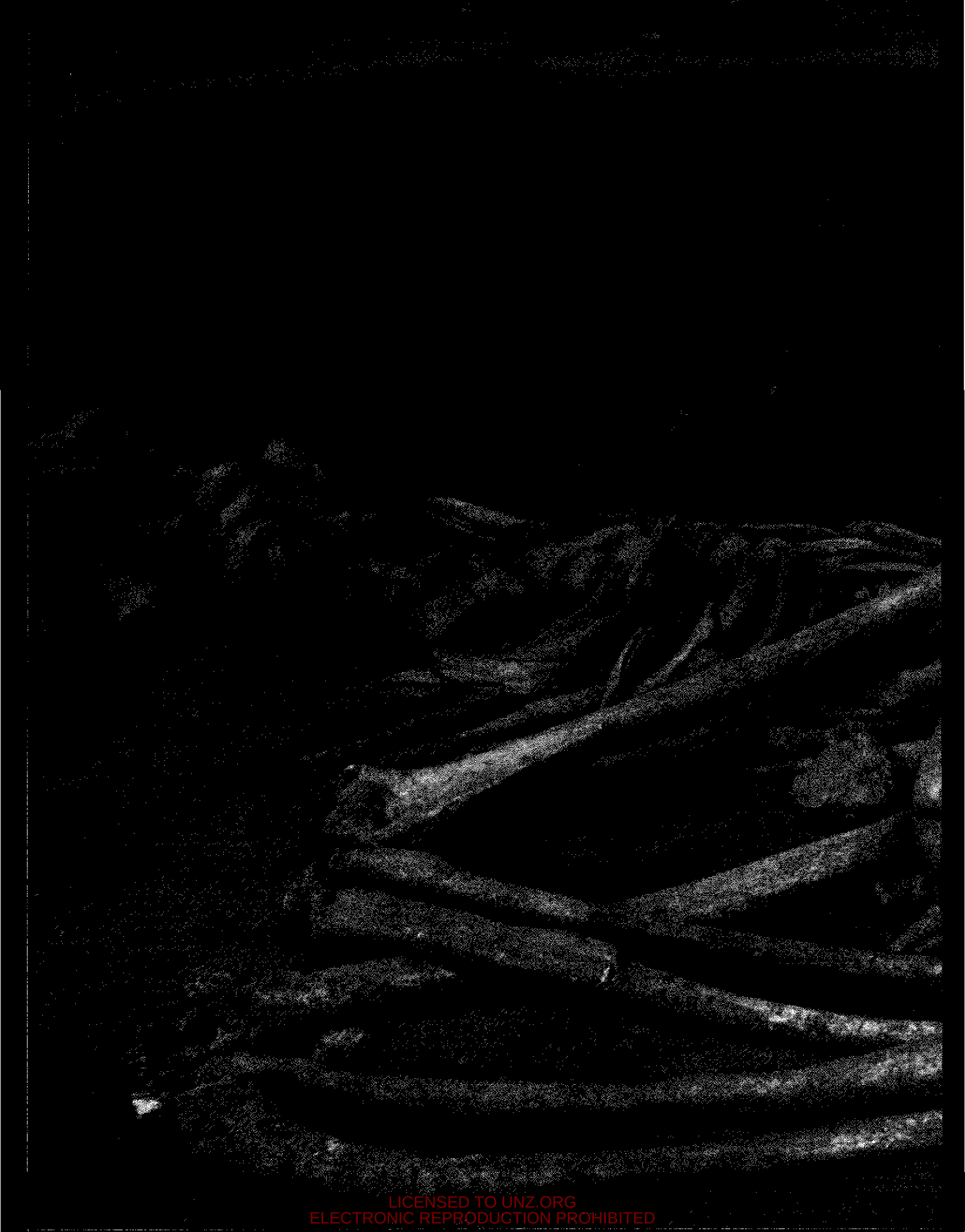

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Grave Injustice

Federal laws about burial remains put politics before science.

Steven Vincent

IMAGINE AN AMERICA where the federal government takes an active role in promoting the spiritual values of a certain cultural group. This group rarely documents its largely unknown religious practices and in fact considers many rituals too secret for public knowledge. Yet should outsiders violate its beliefs, the government can threaten them with lawsuits, fines, or prison sentences.

Many people believe this scenario needn't be imagined at all, because this America exists now. A statute called the Native American Graves Protection and Repatriation Act (NAGPRA) has created a legal and cultural imbroglio that has scientists frustrated, art dealers scared, and the general public befuddled. In the words of one archaeologist, Geoffrey Clark of Arizona State University, "What we're seeing here is the triumph of political correctness over logic and reason."

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In many cases Indians have persuaded state agencies to uphold tribal taboos. One anthropologist says, "Many Indian tribes are just creating traditions as a way of pursuing social, legal, and cultural power."

To Native American groups and their supporters, NAGPRA and similar laws are long-overdue measures that protect burial remains and sacred objects, helping redress the wrongs Indians have suffered since 1492. According to Arizona Judge Sherry Hutt, speaking before the U.S. Senate in 1999, NAGPRA is "one of the most significant pieces of human rights legislation since the Bill of Rights." For Fort Lewis College anthropologist Kathleen Fine-Dare, author of *Grave Injustice: The American Indian Repatriation Movement and NAGPRA*, "This was more than a law; it was a change in the American consciousness." Cherokee tribe member Steve Russell, an associate professor of criminal justice at Indiana University, says the law "has helped transform Indian bones from archaeological specimens to the remains of human beings."

The law's critics disagree. "This law presents a clear and present danger to our study of the past," says Alan L. Schneider, an attorney with the Oregon-based pro-archaeology group Friends of America's Past. "The people in Congress who voted for this measure never thought it would go this far." The sentiment is echoed by a leading dealer of Indian artifacts who, like many people interviewed for this article, prefers not to be identified by name. "NAGPRA frightens everyone—dealers, collectors, everyone," he says. "I don't want Big Brother snooping around my business."

How did a well-intentioned piece of legislation come to provoke fears of Orwellian snooping? The answer involves the weighted history of Indian relations, a vaguely written federal law, and the zealous agencies that seek to enforce it, as well as aspects of Native American culture that strike some non-Indians as confusing and often contradictory.

Repatriation Rising

Signed by the first President George Bush in 1990, NAGPRA requires federal agencies, and institutions that receive federal money, to inventory any bodily remains or important cultural artifacts of Indians, native Alaskans, or Hawaiian peoples in their collections—and to return those items, on request, to "culturally affiliated" tribes or descendants. In addition, the statute restricts commercial trade in those objects. Exempt from the law are objects held by the Smithsonian Institution (a separate statute, the 1989 National Museum of the American Indian Act, covers those) or objects found after 1990 on state-owned lands (most states have their own repatriation laws). Nor does NAGPRA apply to items amassed in private collections before 1990 or discovered on private land.

"Congress was seeking a balance between private rights and the rights of Indians," says Jack Trope, executive director of the not-for-profit Association on American Indian Affairs (AAIA), who served as an instrumental adviser to legislators during the creation of NAGPRA. "But at the same time, most people drafting this law felt that our legal system needed to do a better job of representing Native American culture."

The act was the latest in a series of often faltering efforts to preserve Native American culture and grant Indians equal protection under the law. Congress established the Antiquities Act of 1906 in part to prevent the looting of Native American sites. In 1978 legislators passed the American Indian Religious Freedom Act, under which the government recognized Indian religious values and rituals, and in 1988 they created the Archaeological Resources Protection Act, which mandated stiff penalties for removing Native American objects from public lands without a permit. The law, however, stipulated that recovered objects remained the property of the United States, to be "preserved by a suitable university, museum, or other scientific or educational institution" rather than repatriated to tribes.

The sea change in public attitudes toward Native American culture began in the most unlikely of places. In 1976 Maria Pearson, a Yankton-Sioux woman living in Iowa, learned that a road crew had excavated a grave site, unearthing 26 Caucasian skeletons and one of an Indian woman. State officials reburied the white bones in a new cemetery but shipped the Indian remains to Iowa City for further

Previous page: Islands Field Site, Indian burial ground containing remains

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study. "That's discrimination," said Pearson, recalling the incident for an Iowa newspaper in 2002. "What made those white people not worth studying? The Indian has got to remain buried just like everyone else."

Arguing that the issue was a civil rights violation, Pearson went to Iowa's governor, only to be rebuffed. Undeterred, she fought on, rallying a grassroots movement that led, in 1982, to the first state law requiring that public agencies return Native American remains to their affiliated tribes. Coupled with a rising interest nationwide in Indian rights, Iowa's statute gave impetus to a legal groundswell that eventually led to NAGPRA.

Today museums across the country are inventorying and repatriating thousands of bones and funeral objects held in their collections. For example, the Smithsonian's Museum of Natural History is returning some of the 18,500 human remains and tens of thousands of artifacts it possesses from over 90 indigenous peoples. In the largest repatriation case to date, the Robert S. Peabody Museum at Phillips-Andover in 1999 returned the bones of 2,000 Pecos Indians and over 500 funerary items to the pueblo of Jemez, New Mexico. As recently as last October, Chicago's Field Museum returned the bones of 150 people to the Haida tribe in British Columbia.

"It's been good for everyone," says Fort Lewis College's anthropologist Fine-Dare, who applauds her own institution's efforts to inform more than 25 Indian tribes about the school's holdings of Native American bones. "It helps show that historical wrongs can be corrected—and that museums don't have to be gutted in the process." Still, in part because of the huge number of bones possessed by American museums, "only around 10 percent have found their way back to their tribes since NAGPRA's passage," estimates Karenne Wood, repatriation coordinator for the AAIA.

Abusing the System

Few, if any, critics take issue with returning bones of Indians to their descendants. It's the abuse of the process that angers many archaeologists and anthropologists. They argue that NAGPRA has given Native Americans license to claim human remains whether or not there is a genealogical link, often at the expense of scientific knowledge.

In 1988, for example, an 8,000-year-old skeleton was found in Hourglass Cave in the Colorado Rockies. The National Parks Service repatriated that skeleton to the Ute Indians after a study that many leading anthropologists thought was inadequate. In 1989, similarly, an 11,000-year-old skeleton was discovered in Idaho. State officials turned it over to the Shoshone-Bannock—permitting only one anthropologist to examine the bones—even though the tribe is believed to have dwelled in the region for only 2,000 years. "NAGPRA and similar laws have created expectations among Native American activists and some government officials that they can use these statutes to impede scientific study," says Schneider of Friends of America's Past.

Worse, critics contend, the law encourages Indians to assert claims based on myths, rituals, oral traditions, and other tribal practices not normally recognized by the scientific community. Some Indians now argue that information garnered from the study of their ancestors' bones is "proprietary" and thus the exclusive possession of the tribe. Others attempt to prevent the publication of photographs of sacred objects or to dictate the circumstances in which institutions exhibit certain artifacts, based on claims that the items are "alive" or otherwise possess a divine spirit.

In many cases Indians have persuaded state agencies to uphold tribal taboos, such as preventing menstruating women from handling certain objects. "A lot of this nonsense comes from the politicization of NAGPRA," says one physical anthropologist who wishes to remain anonymous. "Many Indian tribes are just creating traditions as a way of pursuing social, legal, and cultural power."

The issue came to a head with Kennewick Man. In this much-publicized case, the chance discovery of a skull along the Columbia River in Kennewick, Washington, in 1996, led to the finding of 9,000-year-old skeletal remains. Although scientists believed the bones originated from a Caucasian man, a coalition of Indian groups claimed the remains, asserting that the skeleton lay in territory that has traditionally belonged to their people. Or, as one tribal leader stated, "From our oral histories, we know that our people have been part of this land since the dawn of time." The U.S. Army Corps of Engineers—which has jurisdiction over the Columbia River—accepted this argument and announced it would repatriate the skeleton.

Members of the scientific community cried foul and filed a lawsuit; the government and Native American tribes appealed. As the case awaited resolution, archaeologists found they had to battle Indians and their government supporters for every scrap of information they could glean from the skeleton. "The government did a CAT scan of the bones and we asked for the results," says Schneider, who served as a lawyer representing the scientists in the case. "Native Americans objected, and we had to file a motion to see the data." In the words of one physical anthropologist, "It's clear to me that Native Americans are eager to block study of the

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skeleton. Otherwise it might prove they were not the first to inhabit this continent."

On February 4, a three-judge panel of the 9th Circuit Court of Appeals ruled in favor of the scientists, arguing, in effect, that the Indians had put forth an "extreme" definition of "Native American." At press time, the tribes had not yet decided whether to appeal the ruling.

To NAGPRA's credit, the law has been used to deny many of the more outrageous claims. In 1993, for instance, archaeologists working on a 10,000-year-old site in Montana discovered some ancient human hairs and announced their intention to study them. Although there was no evidence of burials at the site, two Indian tribes, the Confederated Salish and Kootenai and the Shoshone-Bannock, filed a NAGPRA suit, contending in part that such research was sacrilegious. The government rejected their argument—although the lengthy court battle prevented study of the hairs for years.

A similar case involves the Fallon Paiute-Shoshone, who in 1997 attempted to assert "cultural affinity" with the 9,500-year-old remains found in Spirit Cave, Nevada, basing their claim largely on tribal traditions that indicated their ancestors had lived in the area since "time immemorial." In that case the tribe's claim was rejected. In November 1999 the Confederate Tribes of Grand Ronde, Oregon, claimed the Willamette Meteorite on display in New York's Museum of Natural History, calling it a "holy object" that conveyed messages from the spirit world. The case was settled with an arrangement that allows the Indians access to the meteorite for cultural and religious purposes.

Perhaps the most bizarre NAGPRA case involves Honolulu's Bishop Museum. This institution had in its collection 83 artifacts and human remains taken in 1905 from the Kawaihae Cave complex on Hawaii. In 2000 the museum gave the objects to an ethnic Hawaiian organization called the Hui Malama, which proceeded to rebury them somewhere in the cave complex. Several other native Hawaiian groups complained, arguing that the Bishop had not allowed them time to assert *their* claims to the objects, as stipulated by NAGPRA. The issue was taken up by the NAGPRA Review Committee, which last May castigated the museum for giving the Hui Malama possession of the objects and ordered the group to return the objects *to the museum*. When the Hui Malama refused, the Bishop requested the right to break into the complex and seize the objects. The Department of Hawaiian Homelands declined the request, and the matter is heading for the courts.

It's this affirmation of group—or tribal—rights over the imperatives of science and the free transmission of knowledge that outrages so many critics. "This is a question of who owns the past," maintains Arizona State's Clark. "I believe in an archaeology that is scientific and belongs to the national patrimony, not to any ideology or 'consciousness group.'" Others worry about the statute's effect on the law in general. Argues attorney Schneider, "A lot of people in government agencies have bought into the idea that they can do anything they want to do right by Indians. Look at the state of Nebraska—it repatriated *all* skeletal remains to Indian tribes, even those which were Caucasian."

Meanwhile, Schneider continues, "you have agencies giving tribal oral traditions the same weight as written documentation—and people in the federal Justice Department contending that scientific study of Indian culture is a savaging of that culture." Add to these concerns the extraordinary sensitivity the government shows toward Native American religion, and you have what many perceive as a kind of touchy-feely attack on fundamental standards of science and knowledge. As the late Clement Meighan, a UCLA archaeologist and fierce NAGPRA critic, wrote in the November 1994 issue of *Archaeology* magazine, "The New Age disposition to invoke or invent beliefs no one really holds, and to maintain they are of a value at least equal to, if not supremely greater than, those that account for the triumph of Western civilization, is given concrete expression in the repatriation movement."

Crackdown

At least no one's going to jail. Well, not in the museum community. The story is different among commercial traders of Native American artifacts. Says Jeff Myers, a New York dealer of Eskimo artifacts, "What started as a way to return Indian bones and protect Native American burial grounds from looting has turned into something far more complex and troubling."

The first case of a private individual convicted under NAGPRA occurred in 1994. FBI agents arrested an Arizona man, Richard Corrow, for attempting to sell sacred Native American artifacts he had purchased on tribal lands. He also possessed objects containing bald eagle feathers, in violation of the 1940 Eagle Protection Act and the 1918 Migratory Bird Treaty Act (MBTA). He received five years' probation. In 1997 a federal court in New Mexico sentenced Arizona dealer Rodney Tidwell to 33 months in prison for selling Acoma priest robes and Hopi ritual masks. Both Corrow and Tidwell appealed, arguing that NAGPRA is too vague regarding which Native American objects are sacred and which

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One artifact dealer moans, "The government will ask Indians, 'Is this important to your tribe?,' and of course they'll say yes in order to get possession of the objects. Next thing you know, *they're* putting it back on the market.'"

aren't. Although their appeals were unsuccessful, the debate they started continues.

Critics maintain that the whole idea of "sacred objects" is often highly problematic and open to various interpretations and politicization. Many Indians converted to Christianity, they observe, and sold or gave away objects they once considered holy. Now, encouraged in part by NAGPRA, Indians are rediscovering their ancestral beliefs and demanding the repatriation of those items. "A lot of Native Americans are born-again animists," Ramona Morris, president of the Antique Tribal Art Association, notes wryly. Others complain that, given more than 2 million Native Americans of over 769 federally recognized tribes, no one knows the full extent of Indian rituals and methods of worship, including many that Indians keep secret.

The only authorities are Indians themselves. As one leading Santa Fe dealer moans, "The government will ask Indians, 'Is this important to your tribe?,' and of course they'll say yes in order to get possession of the objects. Next thing you know, *they're* putting it back on the market." Perhaps even more troubling, by relying on the subjective judgment of tribal leaders, government agencies edge closer toward a relationship with Native American spirituality that violates the constitutional separation of church and state.

Tribal art dealers stay on the right side of the law by avoiding human remains, objects known to be deemed sacred (such as tribal masks), and anything containing the feathers of eagles and other birds protected by law. At the same time, dealers handle only artifacts they know have come from private collections, since NAGPRA's jurisdiction over Native American objects is limited to those that originate from federal or tribal lands. But some observers worry that even this affirmation of private ownership is eroding. "Although the law was originally intended just for museums," says Albuquerque's Robert Gallegos, one of the few dealers unafraid to publicly criticize NAGPRA, "federal agencies are trying to make it apply in the private sector."

In the early 1990s this fear was palpable among dealers in the southwest. Back then there were stories of raids by a joint task force that included agents from the FBI, the Bureau of Land Management (BLM), the Bureau of Indian Affairs, and the National Park Service, among others. This task force would storm into even the most respected Santa Fe businesses looking for contraband "as if we were crack houses," in one dealer's words. The feds disbanded the task force in 1992, but a BLM spokesman defended the agents' actions at the time: "For years dealers have had a free hand in illegally trafficking Native American artifacts...so of course they're going to complain and spread accusations against us." These days, dealers say, NAGPRA enforcement has eased up. Unchanged, however, is the government's dismissive attitude toward dealers' concerns. For example, when I asked a spokesman for the U.S. attorney in New Mexico about the trade's criticisms of NAGPRA, he replied that he didn't know of any negative comments. After hearing a list of complaints about the law and its enforcement, he scoffed that "somebody's fed you a lot of paranoia." Dealer Gallegos thinks that paranoia is just the point. "The government *wants* dealers to get paranoid about the law," he says. "They want us to become so afraid of NAGPRA that we voluntarily stop trading in this field and don't challenge the law in court."

In the view of Gallegos and others, the feds will often bundle a NAGPRA violation together with court-tested laws such as the MBTA. "But prosecutors will get the dealer to plead guilty to NAGPRA," Gallegos adds. "In this way, they build legal precedents to buttress NAGPRA, while spreading a climate of fear through the dealer community."

The Sting

This strategy is what many observers believe lay behind the government's sting operation against respected Santa Fe artifact dealer Joshua Baer, perhaps the most alarming private-sector application of NAGPRA so far. The case began in August 1999, when Baer was approached by an art

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NAGPRA's opponents say the law has done far more for new age sophistry and legal abuse than for science and justice. "In the end," says one archaeologist, the struggle is "all about identity politics and power."

dealer named Bob Clay. Clay told Baer he was representing a wealthy Norwegian collector named Ivar Husby who was interested in buying some first-rate Indian artifacts. In fact, Clay was undercover FBI agent Robert Whitman and Husby was an agent of the Norwegian National Bureau of Investigation. During the next 16 months, Baer did some $40,000 worth of business with the two men, as they wormed their way into his confidence. In September 1999, the agents expressed interest in purchasing items from the dealer's personal collection. Baer at first declined, noting that the objects contained eagle feathers, which the MBTA forbade him to sell.

The agents persisted in their requests, with Husby threatening to terminate future business dealings. In need of cash—his gallery was suffering financial difficulties—Baer relented under the pressure and offered Husby more than a dozen Indian artifacts from October 1999 to January 2000. Federal agents raided Baer's gallery in January 2000, confiscating artifacts and business records; in October 2001, he was indicted for violating NAGPRA and the MBTA.

"This was a classic abuse of the law, when cops enforce a vague statue and make criminals out of people," says Albuquerque lawyer Peter Schoenburg, who represented Baer in the case. "How do you define what's sacred to Indians? The traditions are secretive, sometimes contradictory, and tribes refuse to write them down. Take the Navajo bull-roarers, for instance—Navajos will say some, none, or all the bull-roarers are sacred. How is anyone to know?" (A bull-roarer is musical instrument consisting of an oval piece of wood attached to a lasso.) Even worse, Schoenburg argues, was the way the two agents manipulated Baer. Agent Whitman actually became a close friend of the Baer family, writing to the dealer soon after the raid on his gallery: "I've been doing this all over the world for a long time. This was the toughest case I ever had because I truly like you and your family." Schoenburg filed a motion arguing that the agents' behavior constituted entrapment, but the court dismissed it.

In September 2002, Baer pleaded guilty to six charges of violating the MBTA and three charges of violating NAGPRA, crimes that carried a maximum penalty of 10 years in prison. But Judge John Edwards Conway sympathized with the dealer, noting at Baer's sentencing that many of the types of objects he had offered for sale had been sold by Native American tribes themselves. Conway refused to give Baer prison time. "This is not my favorite statute, so I'm not going to put him in jail," the judge remarked. Astonishingly, he even encouraged Baer to spread the word about NAGPRA to other dealers because "most people have no idea this law exists."

Native Americans and their advocates respond that most people have no idea how important NAGPRA has been in protecting Indian culture from looters, who regularly pilfer objects. (*Archaeology* magazine once estimated that thieves have ransacked 90 percent of the known archaeological sites in the Southwest.) "Native Americans suffered from a kind of historical trauma," says the AAIA's Trope. "The repatriation of ancestral objects is a very emotional, healing experience for them." Moreover, the horror stories about the statute ignore the ways NAGPRA has *increased* scientific knowledge. "Through consultation with Indians, we've learned more about tribes than ever before," says Thierry Gentis, assistant curator and collections manager of the Haffenreffer Museum at Brown University.

But even if you grant those points—and not every critic of the statute will—that would simply suggest that the law should be reformed rather than repealed outright. In practice, NAGPRA's opponents say, the law has done far more for new age sophistry and legal abuse than for science and justice. "In the end," says archaeologist Clark, the struggle is "all about identity politics and power." ▯

Steven Vincent (scvincent@att.net) is a freelance writer living in New York City.

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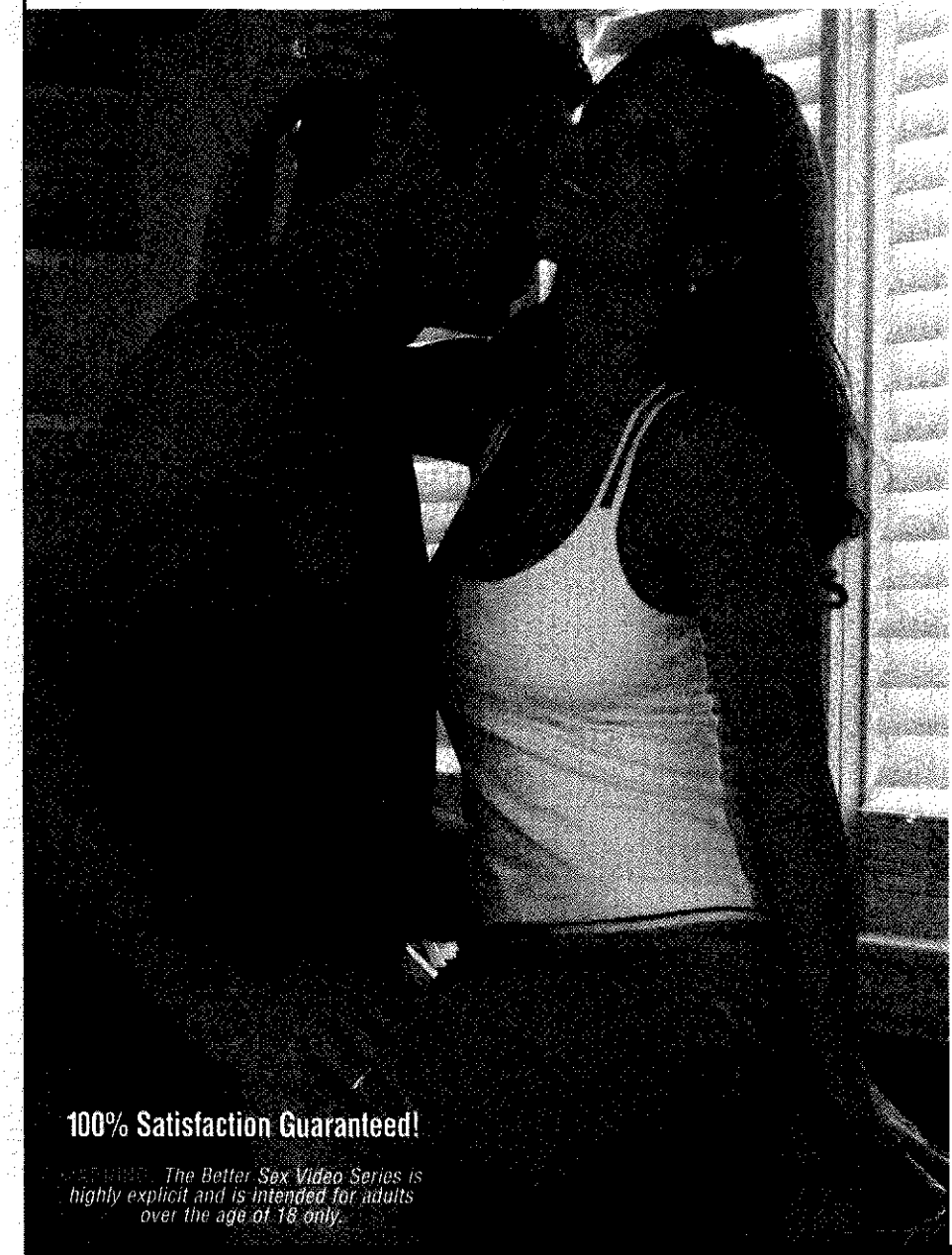
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Bloody Shame

Unnecessary regulations are making blood banks run dry.

Caroline Waters

If you walked into a blood donation center before the HIV crisis, you would have been asked 15 quick questions, then either accepted as a donor or not. Today those questions have burgeoned to almost 50, and the list continues to grow.

The extra caution stems from a colossal error that blood bank officials made two decades ago, when they ignored the early warning signs of HIV and failed to implement appropriate screening and cleaning procedures. As a result, America's blood supply became contaminated and 20,000 people were infected with the deadly virus. It's no surprise that the Food and Drug Administration (FDA) has decided to take no further chances. But its efforts to prevent another HIV fiasco may create a different sort of disaster: a blood supply that is extremely safe but too small to meet the nation's needs.

Empty blood-drawing station, © CORBIS

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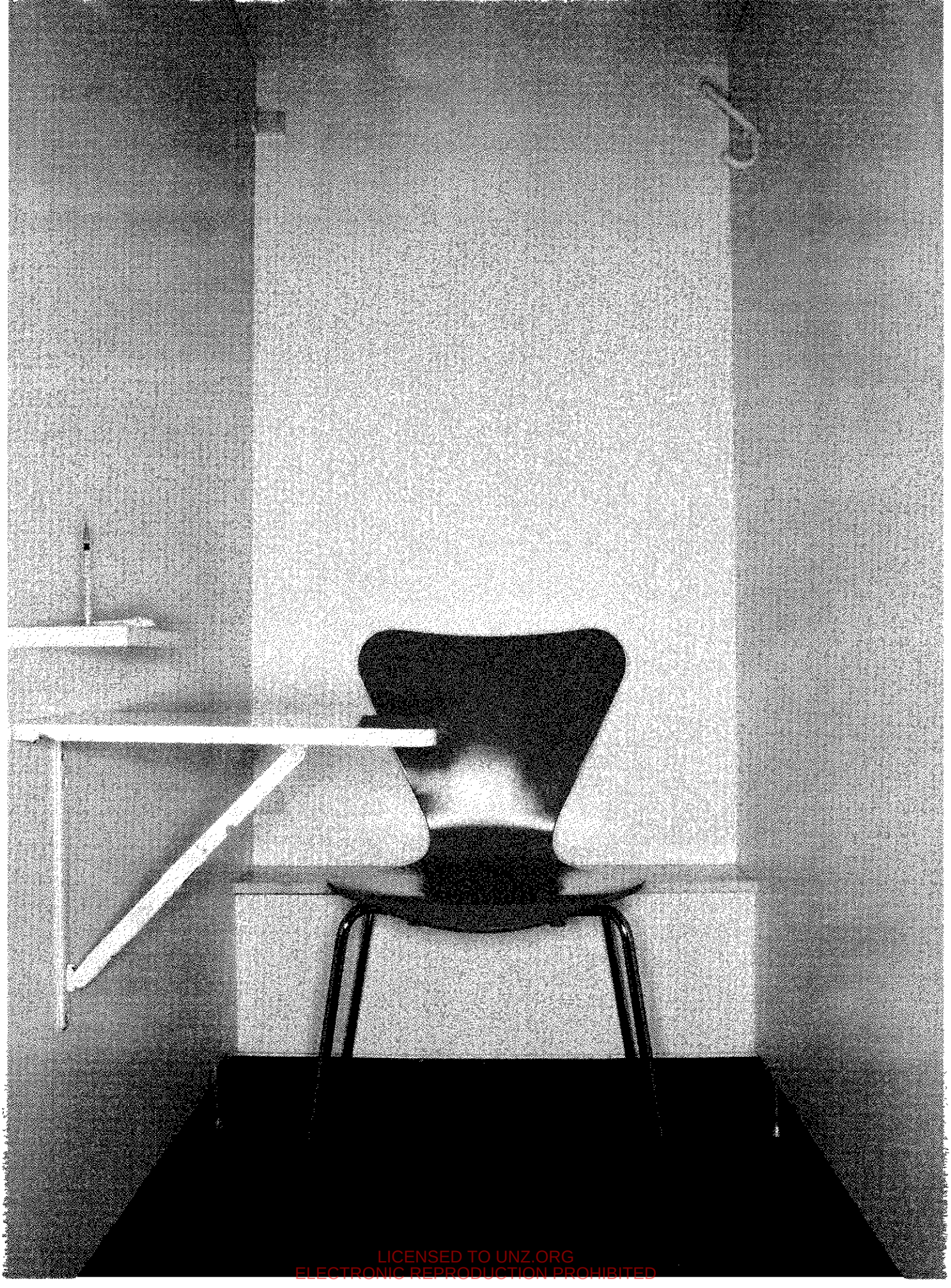

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In response to recent outbreaks of such illnesses as SARS, West Nile virus, and the human form of mad cow disease (Creutzfeldt-Jakob disease), the FDA is forcing blood banks to follow rules that substantially increase the odds that a donor will be rejected. Safety experts consider many of these rules, known as deferrals, nonsensical, and they warn that the restrictions are reducing the donor base so drastically that hospitals would not have enough blood in the event of a large-scale crisis.

Blood centers around the country have lost an estimated 5 percent to 10 percent of their donors as a result of the new FDA rules. The blood shortage is bad enough to force cancellations of surgery in some regions.

Blood Simple

One of the most disparaged restrictions on donors is called the European deferral, which is aimed at reducing the risk that Creutzfeldt-Jakob disease will enter the U.S. blood supply. To date, there is no conclusive evidence that the disease can be transmitted via blood, although the FDA argues that studies have shown it is theoretically possible. The mandate bars donors who lived in the U.K. for three months or more between 1980 and 1996 or in Europe for six months or more from 1980 to 1990. Other restrictions exclude people who have had a headache with fever in the previous week; men who have had sexual relations with other men since 1977; women who have had sex with a man who has had sex with another man since 1977; people who have experienced angina in the previous year; and anyone who has received a tattoo in the previous year.

The rules have produced no shortage of critics. One is Arthur Caplan, a University of Pennsylvania medical ethicist who until last year served on the FDA's Blood Supply Advisory Committee. "The blood shortage is the worst challenge the health system faces in terms of doing without a key biological resource," he says. "It grows worse every day as demand continues to rise and supply stays stable."

Caplan argues that the FDA could relax some of the restrictions, thus increasing the number of qualified donors. "What possible reason would we have to defer donors who have not converted to AIDS since 1977?" he asks. "The disease has no such incubation period. Moreover, we can reliably detect anyone exposed to HIV within a year after the exposure." He suggests that instead of disqualifying those people forever, asking them not to donate for three years after engaging in risky behavior would achieve the same level of safety.

Caplan also believes deferring donors from the U.K. or Europe does not square with the evidence about the role played by blood transfusion in transmitting mad cow disease. "If it could be transmitted that way," he asks, "then why did it not appear all over the blood supply in the U.K.?"

Louis M. Katz, medical director of the Mississippi Valley Regional Blood Center in Davenport, Iowa, and president of America's Blood Centers, which supplies half the nation's blood, estimates that blood centers around the country have lost 5 percent to 10 percent of their donors as a result of the new FDA rules. He says the higher estimate applies if you include the people who don't even try to donate because they've heard about the deferrals. He adds that the rules have had an especially noticeable impact in cities such as New York, where a substantial proportion of the blood supply historically came from European donors or from donors with extensive travel to or residence in Europe.

Katz says the blood shortage is bad enough to force cancellations of surgery in some regions. Authorities had to begin making public appeals for blood almost as soon as the deferrals were put into place. In 2002, for instance, as two liver transplants were under way in Jacksonville, Florida, officials put out a press release declaring, "Florida Georgia Blood Alliance desperately needs your help today...to meet the blood needs of local patients."

Lisa Bloch, director of communications for the Blood Centers of the Pacific, says her organization is losing about 100 donors a month due to the European deferral alone. To make up for lost donors, it has to import 20 percent to 25 percent of its blood from outside its region.

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Asked if she would feel comfortable receiving blood donated without the current deferrals, she says she would. "I'm much more at risk if I don't receive a blood transfusion due to a severe blood shortage," she explains.

The FDA admits the European deferral alone will exclude at least 5 percent of people who habitually give blood, even though studies have shown that those people are least likely to have tainted blood because their motivations stem from a sense of moral obligation and responsibility to the community. But Jay Epstein, director of the FDA's Office of Blood Research and Review, says the deferral is an appropriate, prudent measure. He cites a study of sheep that proved it was theoretically possible for mad cow disease to spread via human blood. What's more, he says, the disease can take years, even decades to appear in its victims. A recent "probable case" of transmission by transfusion in the U.K. is still being investigated.

A cash incentive is opposed by those who believe paying for blood would attract people so desperate for money that they would lie on the screening questionnaire. But quality can be controlled by direct inspection in virtually all cases.

Blood Money

While the FDA may have reasons to err on the side of caution, the reality remains that Americans need blood and are dangerously short of it. Lisa Bloch believes Americans simply aren't aware of the critical need for blood. "The reality," she says, "is that there is a very small number of people shouldering a huge burden."

So why don't blood banks increase their efforts to recruit new donors? According to Katz, Medicare's reimbursement practices discourage them from doing that. When the FDA makes new demands on blood banks, such as issuing additional deferrals, the responsibility lies with them to make up for the lost donors, and that means an increase in expenses. That would be fine if somewhere along the line the blood banks recouped those expenses. But they don't.

"Where do we cut our expenses?" Katz asks. "In infrastructure, personnel, or investment in donor recruitment?" He says that when Medicare ignores the increased costs of new safety initiatives and doesn't adjust reimbursement to the end users (hospitals), the blood banks are under tremendous pressure to hold the line on their prices. And since most insurance companies use the reimbursement level set by the Centers for Medicine and Medicaid Service (CMS) as a benchmark, its policy "ripples throughout the entire health care system."

If CMS tied its reimbursement schedule to the increased costs of blood safety, Katz says, blood banks could use the extra funds to invest in donor recruitment. "We don't need 'help,'" he says. "We need for the unfunded mandates of the FDA to be funded by CMS. That would not be 'help'; it would be rational."

Another logical step would be to offer blood donors a cash incentive—a proposal that's been met with fierce opposition in the past from those who believe paying for blood would attract people who are so desperate for money that they might not be honest in responding to the screening questionnaire. (Plasma donors, interestingly, have been financially compensated for years.) But according to Richard Epstein, a legal scholar at the University of Chicago and author of *Mortal Peril: Our Inalienable Right To Health Care?* (2000), quality can be controlled by direct inspection in virtually all cases. (He does agree that some populations should be excluded, such as AIDS patients, intravenous drug users, and alcoholics.)

And the truth is that blood banks already offer donor incentives. Blood Centers of the Pacific gives its donors T-shirts and raffles prizes, for instance, along with the standard post-donation juice and cookies. It's hard to understand why the difference between cash and prizes should stand in the way of a potentially ample blood supply. ▯

Caroline Waters (cwaterswrites@yahoo.com) is a freelance writer in Mexico.

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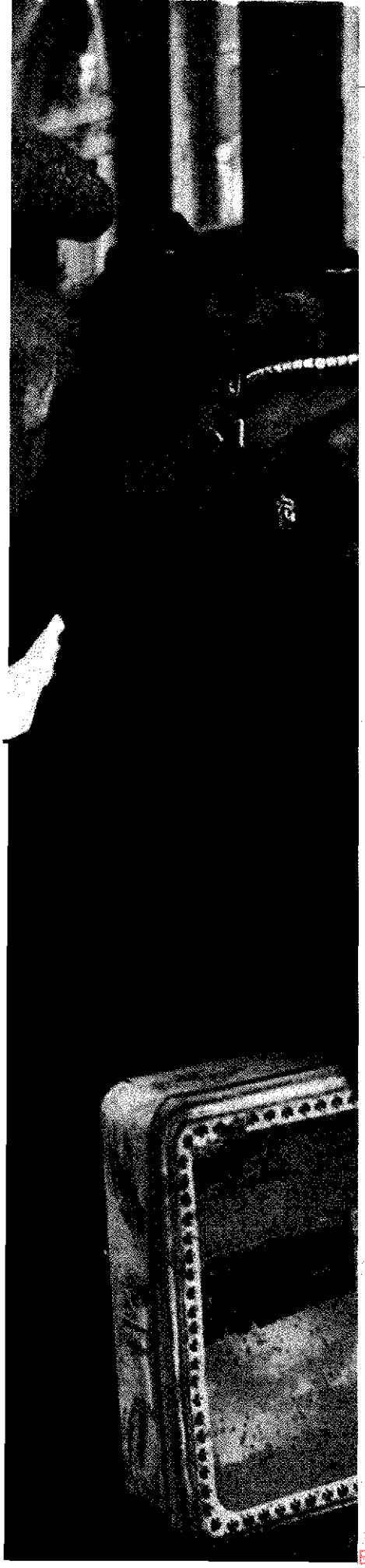

James Joyce enthusiasts in Dublin celebrate Bloomsday. ©Reuters

Ulysses Unbound

Why does a book so bad it "defecates on your bed" still have so many admirers?

Tim Cavanaugh

This June 16, fans, hecklers, curiosity seekers, and others with an interest, pro or con, in James Joyce's *Ulysses* have a new treat to chew on. A lush period adaptation of the problematic novel, with Stephen Rea playing the title role of Leopold Bloom, Joyce's amiable, put-upon hero, is playing at gatherings for the 100th anniversary of "Bloomsday." That's the day in 1904 on which *Ulysses*, originally published in 1922, takes place.

Director Sean Walsh's *Bloom* marks the second time *Ulysses* has been brought to the big screen. Joseph Strick made a modest, modern-dress version of the story in 1967. That a book universally considered unfilmable should already be on its second movie is testimony to *Ulysses*' powerful attraction and decidedly mixed luck.

History has not been kind to efforts at popularizing *Ulysses*. Anthony Burgess, author of *A Clockwork Orange* and other brilliant works, proselytized tirelessly for Joyce's work, producing television documentaries and a musical, *The Blooms of Dublin*, to little avail. *Calico*, Michael Hastings' recent play about Joyce's troubled daughter Lucia, was pronounced unconvincing by *The Guardian* and termed "a dud soap about artists" by *The Daily Telegraph*.

Ulysses recently has drawn the fire of literary iconoclasts. "I will say it once and for all, straight out: it all went wrong with James Joyce," writes the dyspeptic critic Dale Peck, who condemns the book's "diarrheic flow of words" and applauds himself for having spoken "heresy" against a canonical work. "*Ulysses* could have done with a good editor," the acclaimed novelist Roddy Doyle recently told an audience of crestfallen Joyce fans. "You know, people are always putting *Ulysses* in the top 10 books ever written, but I doubt that any of those people were really moved by it." Concludes the writer Stefan Sullivan in a recent *Washington Times* appreciation: "*Ulysses* is a pretty awful novel."

In the customer comments at Amazon.com, readers express bitter hostility at a book they suspect has been rammed down their throats by academics. "This is one of those classic novels that gives classic novels a bad name," writes Eric L. Sparling. "Joyce is blind in one eye because he read *Ulysses* and then the eye hung itself," writes nebber1214. "I'm contemplating traveling back in time and murdering James Joyce, in the

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face...For *Ulysses* to be any worse of a book, it would have to break into your house and defecate on your bed." Another disgruntled reader announces, "Its only function is to keep blinkered academics busy trying to wring another drop of meaning from a text already exhausted from analysis." Another says, "I feel sorry for English majors who are forced to read it."

Such protests would appear to be on the right side of history. As the cultural standing of literary modernism has eroded (when was the last time anybody at a cocktail party cared whether you were familiar with Ezra Pound's *Cantos*?), the monuments of the early 20th century increasingly appear to demand too much work and provide too little enjoyment. And none of these monuments is larger or more assailable than *Ulysses*, a dense, allusive, 300,000-word blend of stream of consciousness, multiple narrators, genre parodies, Irish history, and a long, farcical dream play.

"Bloom himself would never and could never have read *Ulysses* or a book like *Ulysses*," John Carey writes in his book *Pure Pleasure: A Guide to the 20th Century's Most Enjoyable Books*. "The complexity of the novel, its avant-garde technique, its obscurity, rigorously exclude people like Bloom from its readership. More than almost any other 20th-century novel, it is for intellectuals only."

And yet 50,000 tourists, many or most of them with little connection to academia, are expected to flood Dublin on June 16. Bloomsday has become the world's de facto literary holiday, when devotees in Edwardian costume re-enact the book's salacious scenes, sing Irish music hall melodies, and tramp out for 18-hour pub crawls with a zeal more reminiscent of a *Star Trek* convention or a Renaissance Fair than a salon of academic snobs.

Astrologers, well-read doctors, prisoners, and fly fishing experts have all taken a crack at applying their areas of expertise to Joyce criticism; the *James Joyce Quarterly* in its next issue will publish an article by a high school student. Prominent fans have included Jerry Garcia, John Lennon (an early *Quarterly* subscriber), Mel Brooks (who named the hero of *The Producers* "Leo Bloom"), Woody Allen, and *Slacker* filmmaker Richard Linklater (whose movies are replete with *Ulysses* allusions and stylistic riffs).

The virtue of difficulty, the notion that being hard to understand was a badge of literary honor, has fallen into serious and perhaps irreversible disrepair.

Of the many riddles *Ulysses* presents, the toughest may be that the legendary Most Difficult Novel in Literature (or Second Most Difficult, if you count Joyce's catastrophic follow-up *Finnegans Wake* as a novel) attracts a wide, dedicated, nonacademic fan base. This may not be particularly unusual in literature (in the last three years we have all seen J.R.R. Tolkien fans inherit the earth), but it is unique in the field of difficult modernist art and literature. "It's hard to imagine much of a celebration for the Arnold Schoenberg 100th anniversary," says Scott Klein, a professor of English at Wake Forest University.

More intriguingly, the book's popular reception grows as its standing declines in both the academy and the wider literary culture. Since the 1970s, modernism's usual gang of idiots—Joyce, Pound, T.S. Eliot, Gertrude Stein, and a handful of others—has been largely displaced from the position of cultural dominance it enjoyed through most of the 20th century.

To be sure, the bear market in modernists is not complete: Virginia Woolf's stock continues to hold steady, or even climb, and wider studies of the modernist period and movement have made a comeback in the past decade. But the virtue of difficulty, the notion that being hard to understand was a badge of literary honor, has fallen into serious and perhaps irreversible disrepair, and some once-major figures (*Blast* editor Wyndham Lewis springs to mind) are all but forgotten.

At the same time, studies such as Lawrence Rainey's *Institutions of Modernism* examine literary abstruseness as a response to specific market conditions rather than (as Eliot and others argued at the time) an indispensable tool for comprehending the chaos of the modern world. The defining aesthetic of the modernist movement—a refusal to compromise with the tastes of the masses—now looks like a liability and a historical accident.

But for all its difficulty, *Ulysses* is oddly immune to the anti-snob criticism—though you wouldn't know it from most of the verbiage about the book. Of the many wrong things T.S. Eliot said in his day, one of the silliest was his argument that *Ulysses*' "mythical method" (each incident in the book's 18-hour time frame mirrors, on a microscopic scale, an episode in Homer's *Odyssey*), is "a way of controlling, of ordering, of giving a shape and a significance to the immense panorama of futility and anarchy

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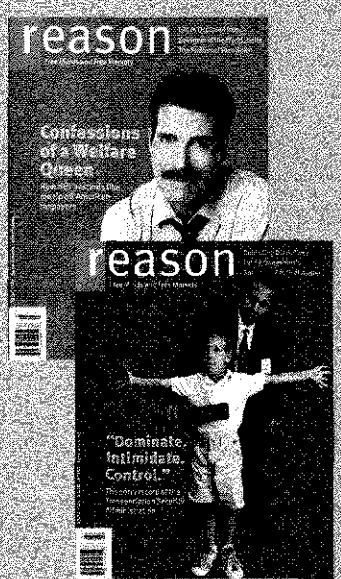
which is contemporary history."

It would be hard to find a writer less inclined than Joyce to see the modern world in such tragic terms, or more enchanted by the disreputable cultural products the market produces. Bloom and his faithless wife Molly are enthusiastic consumers of middlebrow erotica (such as the novel *Sweets of Sin* by M. Paul deKock), popular songs (Harry B. Norris' "Lovely Seaside Girls," among countless others), works of general-interest science and self-improvement (Sir Robert Ball's *The Story of the Heavens*, and *Physical Strength and How To Obtain It* by the strongman Eugen Sandow). Nor are these plebian tastes presented to us as ironic class identifiers. They are, along with Joyce's storied "cloacal obsession," the book's lifeblood.

"The paradox is that the book is a giant fart joke," says Diana Wynne, producer of *Joyce to the World* (ill-advised puns are an unavoidable fact of Joyce fandom), a new documentary about Bloomsday celebrations in Kobe, San Diego, Melbourne, Trieste, Toronto, and several score other cities. "There's this huge vocabulary and complex technique, references to English literature and all kinds of obscure learning. But at the story level there's a lot of low humor, base jokes, and a celebration of ordinary people."

Ordinary people are at the heart of the film Wynne and partner Fritzi Horstman have made. If the amateur criticism, re-enactments, and allusions share anything, it's an inclination to participate in a culture, even if you haven't done the reading. "There's a strange phenomenon," says Robert Spoo, a Tulsa-based Joyce scholar turned intellectual property lawyer. "People will tell you out of one side of their mouths, 'I will never read this book; it's the hardest book in the world.' And then out of the other side they'll say, 'I'm on my way to this *Ulysses* reading; do you want to come?' It has crossed over in a way that other modernist work hasn't crossed over."

Which is not the same as saying the book's appeal has no relation to academia; sharp-eyed readers will note how many of the sources for this story are college professors. Kevin Dettmar, chair of English at Southern Illinois University at Carbondale and author of *Marketing Modernism*, says one of Joyce's cleverest career moves was recognizing the long-term importance of getting your work into the university system. Ironically, though, one of the first negative critiques of *Ulysses* was not that it was too highbrow but that it was not highbrow enough. The reliably stuffy



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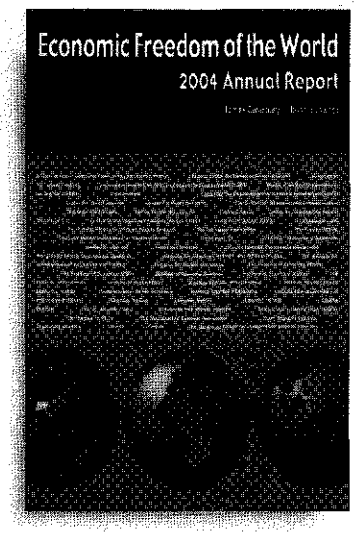

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Virginia Woolf called it the "illiterate, underbred book...of a self taught working man."

The comparison with Woolf (who paid Joyce the more sincere tribute of attempting to ape his technical innovations) is interesting. Eighty years later, the dichotomy between the two remains remarkably intact. Woolf and her Bloomsbury cohorts remain favorites of what remains of the cultural hierarchy: fodder for mid-list novels, frequent subjects of literary histories, an easy Oscar ticket for Nicole Kidman, and so on.

The Joyce industry, by comparison, continues to scrape by. Sean Walsh's no-budget *Bloom* is playing in Ireland and at some of the Bloomsday events in the U.S. but has no American distributor; *Ulysses*' entombment atop so many best-of lists is the sort of tribute that ensures nobody will ever have to read it or think about it again; even the Republic of Ireland has only recently begun to embrace Joyce, after decades of scrupulous neglect, and largely as a means of capitalizing on Bloomsday tourism. The book's academic reputation waxes and (at the present time) wanes, but its more durable appeal among fans is largely a DIY phenomenon. "The fan phenomenon has become a form of carnival," says Michael Groden, a professor of English literature at the University of Western Ontario. "It's a sign of how far the book has gotten into the culture."

Which raises an interesting question: Does high literary reputation put off more readers than it attracts? "The book's academic standing does cut both ways," says Dettmar. "In class, the one thing people know about *Ulysses* is that it's incredibly difficult. There's a compelling case to be made that that's Joyce's fault, that he set it up that way. But that's also part of the continuing appeal."

It also gives an odd power to nonacademic readers. Sean Latham, editor of the *James Joyce Quarterly* and author of *Am I a Snob?*, a study of modernism's exclusivity, notes that difficult texts are by their nature participatory, inviting the reader to complete the book's meaning with his or her own input. "*Ulysses* and *Finnegans Wake* in some ways deny snobbery, because nobody reading them has a privileged reading. That's why amateurs are attracted to these works."

On the other hand, people may just like dressing up in costumes and acting out funny scenes from a comical book—an attraction even scholars admit to in their less guarded moments. "Nobody ever talks about this," says Latham, "but one of the fixtures at Joyce conferences is where people gather around the piano and sing songs from *Ulysses*. There's also a tradition of playing *Ulysses* charades and acting out scenes from the book." Wake Forest's Klein concurs: "Some of the people at these conferences you'd say look more like Gilbert and Sullivan fans than Joyce scholars."

While it's pretty much impossible to plan fun, an appeal to the book's more entertaining aspects is a shrewd

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promotional move. Walsh gave his film a title that specifically avoids the book's literary pedigree because, he said, "if you say [*Ulysses*], people will think they need a degree in English to watch this film." One of the least noted aspects of *Ulysses* is that it contains jokes on nearly every page. The climactic "Nighttown" chapter puts poor Bloom through a hallucinatory ordeal in Dublin's red-light district, including a mock trial for assorted sexual peccadilloes, a mayoral coronation, and an elaborate incident in which he is humiliated and sex-changed by a mustachioed madam. While this stuff has been studied by Freudians, gender theorists, and others, it's also pretty damned funny.

At the moment, the role of lead *Ulysses* killjoy is being played by Joyce's last living heir, the issueless, irritable grandson Stephen James Joyce. Thanks to European Union copyright extensions, Stephen Joyce regained control of the author's published works in the mid-1990s. Since then, he has alienated most of his grandfather's fans by charging exorbitant rates to anthologists and artists, putting the kibosh on a host of adaptations he considered inappropriate (including Groden's "Digital *Ulysses*" annotation project), and reportedly stating that *Ulysses* is meant to be read, not performed or adapted to other media. (The copyright situation is considerably more nebulous in the U.S. While Random House operates on the premise that *Ulysses* remains under American copyright, attorney Spoo argues that because of its tangled publishing history, which includes having been banned as obscene in every English-speaking country for its first 12 years in print, the book is now in the public domain. The public domain reprint house Dover Publications has come out with a facsimile version of the original 1922 Paris edition—the most enjoyable edition in terms of layout and design.)

The Joyce estate's protectionist approach shows little understanding of how contingent literary reputation can be. John Donne and Dante were both at various times forgotten by literary history and only came back thanks to various champions. Fifty or even 20 years ago it would have seemed crazy to predict that Jane Austen would one day loom larger than the Romantic poets who were her contemporaries—or that Colin Firth's hunky turn as Mr. D'Arcy in the BBC version of *Pride and Prejudice* would play at least some part in that reversal. To believe that even a great work of literature can survive through only one distribution channel is nutty. "*Ulysses* was a gamble that Joyce could bridge high and low culture," says Latham. "It's a gamble that initially failed, but you'd have to say these Bloomsday fans are the return....These people who develop such a passion for the book are what we should all hope for as scholars, even if they're channeling their passion in ways that wouldn't fit with scholarly decorum."

And even if all their ancillary products are not equal. The cultural universe is certainly big enough to contain Donal Donnelly's agile, hilarious book-on-tape reading of the unabridged *Ulysses*, Peter Costello's 197-page biography *The Life of Leopold Bloom*, the dance hit "Yes" (in which Dutch chanteuse Amber does Molly Bloom's soliloquy over a driving beat), and anything else the book's oddball fans can dream up. I have reservations about Walsh's movie—Strick's underrated 1967 version, I think, gets a better flavor of the book—and I avoid Bloomsday festivities like the plague.

But I salute a fellow fan. May Walsh be the first term in a new series of fan/entrepreneurs, and may a thousand Blooms flower. ▯

Tim Cavanaugh (tcavanaugh@reason.com) is **reason***'s Web editor.*

Big Mac Attack

Super Size Me asks the question: Is McDonald's unappealing—or irresistible?

During the first lunch of his month-long McDonald's binge, Morgan Spurlock is visibly uncomfortable. Eating in his car after stopping at a drive-through, he has trouble finishing his supersize fries. He complains of "a McBelly ache," "McGas," and "McSweats." Then he leans out the window and vomits on the asphalt.

Since Spurlock's documentary *Super Size Me* argues that fast food is addictive, perhaps this scene is a sly reference to the nausea people often experience the first time they inject heroin. On the face of it, however, Spurlock's reaction undermines his thesis that fast food is so irresistible that people can't help but gorge themselves on it. *Super Size Me* (in which I briefly appear) is full of such contradictions, and they're the best thing about the movie.

Spurlock's fast food feat consists of eating some 5,000 calories a day, twice what his doctor says he needs to maintain his starting weight of 185 pounds. He also avoids exercise »

Super Size Me

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Cheating Heart

Does capitalism teach people to break the rules?

Julian Sanchez

The Cheating Culture: Why More Americans Are Doing Wrong to Get Ahead, by David Callahan, New York: Harcourt, 304 pages, $26

GLEN WHITMAN, AN economics professor at California State University, Northridge, is the kind of teacher cheaters dread. Soon after he began teaching, he realized that Scantron tests—the multiple choice fill-in-the-bubble type—were especially tempting for unscrupulous students. The tests are graded by machine, seldom scrutinized directly by the teacher. And sometimes an incomplete erasure or a smudge will lead to a right answer being marked wrong, making it easy for a cheater to make a few retroactive "corrections" and plead mistreatment by the grading gadget. But as the first student to try that stunt discovered, to his surprise and horror, Whitman scans or photocopies all his students' tests before returning them.

He's equally hawkish about plagiarism. When he gets that tingle in the back of his head about a paper—too professional, too erudite, too different from the student's usual style—he begins punching phrases from the paper into Google, which often turns up the source of student lifting. When that doesn't work, says Whitman, he heads over to Turnitin.com, a site that helps professors identify unoriginal material in papers as easily as students can cut and paste it. Largely because of new technologies, cheating is easier than ever before. But it's hard to know the extent to which students really are cheating more than they used to, partly because it's easier than it ever has been for astute teachers to catch those who *do* cheat.

This isn't a terribly abstruse point. It's one of a half-dozen theories any academic, asked to explain either the fact or the appearance of more prevalent cheating, would be likely to come up with. You'd expect it—and the others—to be discussed in some detail in any 300-page book on the nature of cheating. But as David Callahan proves in *The Cheating Culture*, you'd be wrong.

Callahan's book comes at a time when Americans are particularly concerned with cheating—and what to do about it. The avalanche of stories revealing that corporate accounting statements and front-page articles in *The New York Times* contain more creative fiction than the average issue of *McSweeney's* has left many of us suspecting that the old '60s slogan "never trust anyone over 30" got it exactly half right. Executives lie about corporate earnings; presidents lie about blowjobs (among other things); even Martha Stewart is no longer above suspicion.

A book that provided a unified field theory of cheating would be especially welcome just now, which makes this ham-fisted effort all the more disappointing. Callahan purports to explain a dizzying range of behaviors. The lawyer who pads his billable hours; the doctor on big pharma's payroll who touts a pricey and unproven drug to trusting patients; the CEO who cooks the books; the taxpayer who fabricates an exemption on his annual return; the teenager who downloads the new Eminem track off BitTorrent or Kazaa—all are cited as instances of "cheating," with little fuss over any distinctions between them. And all of them, apparently, are Milton Friedman's fault.

Sometime in the late '70s, according to Callahan's narrative, a nefarious cabal of "laissez faire ideologues" began remaking American law and culture along Social Darwinist lines. The ever-increasing disparity between the jackpot rewards for a few winners at the top and the more modest returns to the average professional, as well as managerial pressure on employees to be more productive, increased the incentive to cut corners to get ahead, even as the steely-eyed government watchdogs who had long held cheating in check were declawed. The cheaters soon reached a critical mass, creating a sense that "everyone is doing it," that cheating is positively necessary just to keep up, and eroding the social and professional norms that had hitherto made the average person reluctant to defraud clients and colleagues. Hence the "epidemic" of cheating we see today.

There's probably something to this argument. It certainly will be *part* of any correct account of why people cheat. But here, like a catchy melody in the hands of Andrew Lloyd Weber, it is so stretched, burdened with a narrative responsibility so far beyond its powers, that it soon grates as badly as the 12th recapitulation of the "Music of the Night" theme.

Although Callahan illustrates his thesis with a series of "ripped from today's headlines" examples, by his own admission he never establishes that cheating really *has* increased as dramatically as he assumes. In the midst of a discussion of the genuinely unsettling influence of pharmaceutical company dollars on doctors' prescription habits, for instance, Calla-

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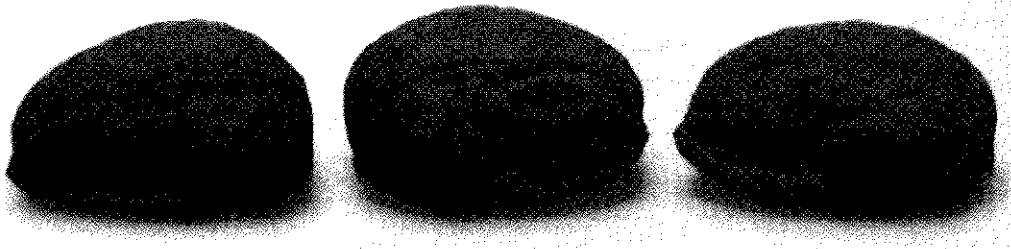
han acknowledges in an endnote that "there is little hard evidence of either an increase or decrease in conflicts of interest among doctors. According to some observers, today's conflicts are not necessarily more common than in the past, just different."

One reason cheating is hard to gauge is that, as Glen Whitman's experience at CSU shows, technology and pervasive media make it easier to catch cheaters than ever before, even as the stories of those who are caught get ever wider exposure. This in turn makes us more focused on cheating, and more likely to perceive it as prevalent. It's not likely, after all, that clerical molestation of children is hugely more prevalent now than it was a century ago. The appearance of an "epidemic" stems from our greater awareness of the problem and from increased willingness to speak publicly about it.

Stricter standards may also increase formal "cheating" merely by strengthening our definition of it. Callahan is nostalgic for the days before nasty bottom line pressures led law firms to begin tracking billable hours, a time when "law firms had not yet learned the trick of working to death armies of young associates while reaping all the profits." Among lawyers themselves, hourly billing is a frequent whipping boy: It encourages associates to work hard (or pretend to), but not necessarily efficiently. Like any system of incentives, it's a double-edged sword. But the problem hourly billing was introduced to solve, while harder to pin down than fabricated hours, was no less worrisome to clients: the temptation to do a quick-and-dirty job, or to bill out of proportion to the amount of work required for a task.

Even if we assume we're cheating more today, it's surprising how many of Callahan's hand-picked anecdotes only dubiously support his case. He parrots the notion that California's electricity crisis in 2001 was the result of "deregulation" rather than stupid regulation posing as deregulation. But as many observers have noted, more thoughtfully structured (and more genuine) power deregulation in other states did not produce the shortages seen in the Golden State. The spate of corporate accounting scandals is supposed to fit into Callahan's narrative, a tale of cruel pressures created by ever "leaner and meaner" corporations. Yet these cases actually indicate lax management accountability to boards, encouraged by flush times and poor corporate governance rules. Callahan's prime example of the pernicious influence of big drug companies is the opposition of some doctors to the ban on ephedra—opposition that's explained at least as well by the weak evidence for the stimulant's lethality as by greed. If anything, many drug companies had reason to celebrate the elimination of an herbal (and therefore unpatentable) competitor. At one point, Callahan even resorts to citing a single article in the campus newspaper of Susquehanna University as proof that our capitalist culture's pundit class wanted to excuse the Enron malefactors.

The only attempt to rebut the free market fanatics who serve as *The Cheating Culture*'s vague villains—their arguments are never really explained—comes via the shocking revelation that think tanks supporting deregulation (such as my paymasters at the Reason Foundation)



The Cheating Culture (cover detail)

because, he says, that's what most Americans do. I hope I'm not ruining the movie by revealing the upshot: Spurlock gains weight—nearly 25 pounds over 30 days. His cholesterol goes up, and so does his blood pressure. His doctor describes his liver function test results as "obscene." Spurlock complains of sluggishness, depression, shortness of breath, impotence, chest pressure, and headaches. Again, this experience does not seem so alluring that people would be clamoring to share it.

After nine days, Spurlock announces, "I'm pretty bored with their menu." When it's all over, he says with relief, "I can't believe that today I'm going to get up and not have to eat at McDonald's." Yet Spurlock also claims he was hooked on fast food during his binge, feeling happy only while eating. "I definitely went through serious withdrawal symptoms," including headaches, sweats, and shakes, he reported at the Washington, D.C., International Film Festival in May.

You could say Spurlock's experience reflects the reality of addiction: It's not something you fall into; you have to work hard at it. As the psychologist Jeffrey Schaler has observed, it takes "an iron will" to be an addict. But this understanding of addiction—as a choice, not a disease—works against Spurlock's attempt to blame fast food chains for making us fat.

Spurlock detracts from his message in other ways as well. Although he generally presents »

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often get money from businesses that would benefit from it. But if the Economic Policy Institute's union funding doesn't prevent Callahan from citing its papers and studies, why does the taint of corporate money make it permissible to glibly dismiss anything coming from a free market think tank?

When it comes time to offer his own policy prescriptions, Callahan serves up a tepid set of center-left talking points, many strikingly disconnected from his argument. For several hundred pages, Callahan's core argument is that cheating results from the wealth gap between the middle class and the super-rich—well-paid second-string athletes looking up at the top earners, urban writers and academics trying to dress and live like the lawyers in their social circle. In a stunning non sequitur, he then proposes a set of reforms aimed at raising the absolute position of unskilled workers, such as a higher minimum wage. By his own logic, he should be stumping for a *maximum* wage.

Despite occasional calls for a vaguely defined "new social contract," much of Callahan's analysis is marked by the kind of hyper-economic myopia you'd expect from his Chicago School foes. Consider tax evasion. Callahan adheres to a rational choice model of tax compliance, according to which the answer to cheating is more detection and punishment.

Callahan passes up an opportunity to enrich his account with a survey of some fascinating empirical research showing that "tax morale"—the sense that the system is fair and treats taxpayers with respect—is at least as important as fear of the authorities as a determinant of compliance, and that increased enforcement can even *reduce* compliance. After all, even the IRS's own paid helpline operators seldom know the "right" answer to questions about the convoluted tax code. Little wonder that many see the tax system as an arbitrary series of baffles to be gamed as best one can.

Economists Bruno Frey and Lars Feld have speculated that taxation is subject to a variation of the "crowding out" effect that some argue occurs when people are paid for blood donations: When punishment and reward become central motives for participation, "internal motivations," such as a sense of civic duty, are displaced. That's not to say less enforcement would be better, only that Callahan is uninterested in any analysis that doesn't help him bludgeon his political enemies.

It's fairly easy to churn out a partisan potboiler clothed as a meditation on a topic of public concern. It's just not a very good way to do social science.

An amusing game to play while reading *The Cheating Culture*—and perhaps the only way to avoid being driven mad by its plodding repetition—is to imagine the book's anti-matter counterpart. It would be a right-wing screed penned by Callahan's goateed twin from some mirror universe, his equal and opposite in zeal and tendentiousness. Armed with a Lexis-Nexis account, this Bizarro Callahan would cherry pick not tales of fallen Masters of the Universe but such tidbits as this, from a background paper on the "fall of the Swedish model" written for the United Nations' 1996 Human Development Report:

"The tax and transfer system that developed was, to begin with, based on the citizens (sic) honesty.... While tax evasion in the 1960s was regarded as a shameful crime, forcing respected citizens even to commit suicide if caught, the honourable tax payer became, in the 1980s, almost regarded as a ridiculous relic of the past. The increasingly generous social insurance systems also invited people to cheat."

Perhaps Bizarro Callahan would cite experimental data from the MacArthur Foundation's Norms and Preferences Network, which found that participation in markets correlates with greater trust and reciprocity. He might note the strong correlation between market freedom and lower government corruption—not terribly surprising, since the effect of increasing regulatory power is to shift "cheating" from the private to the public sphere. And he could add a litany of stories of corrupt businessmen and special interests currying favor and gobbling pork. Bizarro Callahan would gravely conclude that big government and the welfare state are the founts of our cheating epidemic.

The point is not that this anti-matter version of *The Cheating Culture* would get it right—although it might come at least as close as the original—but rather that it's fairly easy to churn out a partisan potboiler clothed as a meditation on some topic of pressing public concern. It's just not a very good way to do social science. ▪

Julian Sanchez (jsanchez@reason.com) is assistant editor of **reason**.

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The Fun-Loving Founding Father

Gouverneur Morris, the first modern American

Will Wilkinson

Gentleman Revolutionary: Gouverneur Morris, the Rake Who Wrote the Constitution, by Richard Brookhiser, New York: Free Press, 221 pages, $26

Gouverneur Morris: An Independent Life, by William Howard Adams, New Haven: Yale University Press, 296 pages, $30

IN 1887 A young Teddy Roosevelt penned an appreciation of the life of his fellow New York pol, the founding father Gouverneur Morris. From this middling pinnacle of historical recognition, Morris slipped to a low plain of neglect and obscurity on which he has languished ever since, consigned to footnotes, unmentioned in civics classes, and omitted from the national mythology.

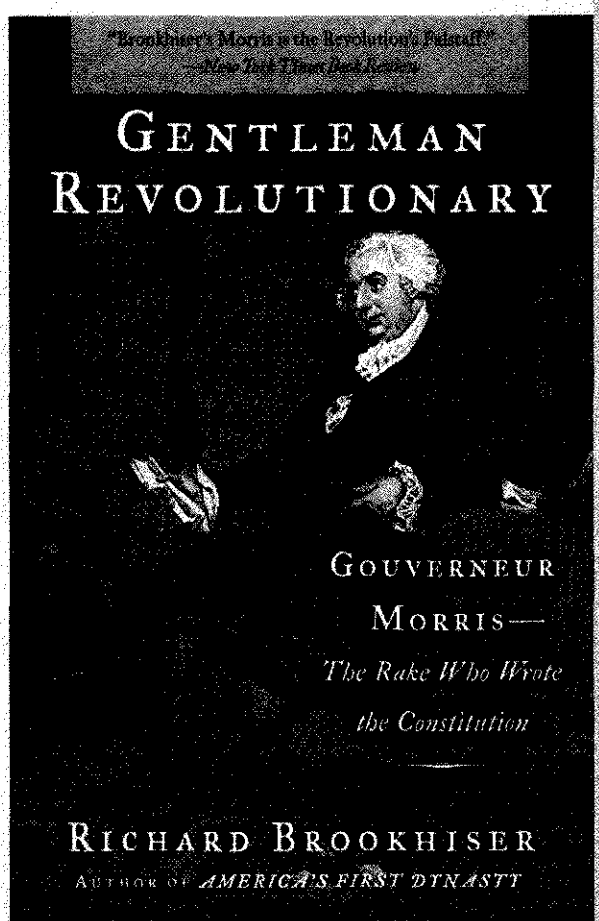
But it's hard to keep a brilliant, peg-legged man down. The recent glut of Morrisania—*two* full-length biographies—marks a welcome revival of the Founding Father Time Forgot. It's an important resurrection. The Founders would still recognize their Morris-drafted Constitution today; it has proven a sturdier instrument than they had dreamed. But most of the Founders would hardly recognize their America in ours.

Gouverneur Morris, however, just might. Though Morris' visage was never carved into a mountain, immortalized in marble on the National Mall, or emblazoned on legal tender, our America—this cosmopolitan, materialist, commercial republic we call home—is in no small part his monument.

Richard Brookhiser's *Gentleman Revolutionary: Gouverneur Morris, the Rake Who Wrote the Constitution*—the latest book in his series on the American Founders—is an easy, rollicking sketch of a suave, determined yet mercurial, razor-witted strategist with a heart of gold. William Howard Adams' *Gouverneur Morris: An Independent Life* is a more academic and comprehensive treatment. Adams is so intent on thoroughness that his narrative, though often elegantly written, at times drags on like an annotated list of events.

Any way you write him, Morris is damned interesting. Both Brookhiser and Adams recognize they've stumbled on a biographical treasure. This is not to say that they approve of the man in all his particulars. But here is a perfect specimen of *pater patriae,* preserved from the ravages of scholarly disputation, free from the accretions of mythmaking and ideology. Because his legacy has so long slumbered, Morris has not been inflated, valorized, or spun for dubious political purposes.

This neglect may have been a consequence


"Brookhiser's Morris is the Revolution's Falstaff."
—New York Times Book Review
GENTLEMAN REVOLUTIONARY
GOUVERNEUR MORRIS—
The Rake Who Wrote the Constitution
RICHARD BROOKHISER
AUTHOR OF AMERICA'S FIRST DYNASTY

Gentleman Revolutionary (cover)

critics of McDonald's as public-spirited activists, he can't resist taking a shot at Samuel Hirsch, the lawyer who filed the first two obesity lawsuits against fast food restaurants. When Hirsch is asked his motive for getting involved in such litigation, he looks puzzled. "You mean, motive besides monetary compensation?" he says. "You want to hear a noble cause?" That's his only appearance in the film.

Spurlock also has a bit of fun with litigation enthusiast John Banzhaf, who somberly explains how fast food chains, like tobacco companies, "lure young children," teaching them to associate their brands with positive images and happy experiences. Spurlock deadpans, "That's why, when I have kids, every time I drive by a fast food restaurant, I'm going to punch my kids in the face."

Spurlock uses humor to advance his thesis too. He shows pictures of famous personalities to kids who look to be about 6. They readily identify Ronald McDonald and George Washington but are stumped by a third picture. "George W. Bush?" one little boy ventures. "No, but that's a good guess," says Spurlock, turning the picture toward the camera. It's a drawing of Jesus Christ.

As with Spurlock's exercise in extreme eating, I'm not sure what that proves. The fact that kids know who Ronald McDonald is does not mean they will end up gorging themselves, Spurlock-style, and become »

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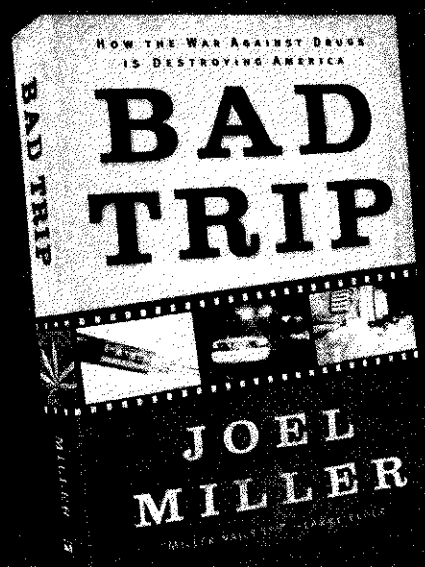

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of Morris' all-too-transparently human life and his evident unconcern for the respect of posterity. You can't be knocked from a pedestal you refuse to mount. Morris was no statue of Republican virtue. He liked making money, and he was good at it. He also liked sleeping with other men's wives. He was good at that, too, and he wasn't sorry about any of it.

Morris had the good sense to be born to a family of "winners in the lottery of the British Empire," as Brookhiser puts it. Morris' grandfather and uncle were colonial governors of New Jersey and New York. His father was a powerful judge. After graduating from King's College (Columbia) at 16, the fresh-faced Morris commenced a clerkship in the law offices of William Smith Jr., a power player in New York politics and finance. His precocious intelligence and savoir-faire were evident to everyone, including himself.

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By the mid 1770s, when tensions with His Majesty's government began to mount, Morris, now in his early 20s, found himself in a family of divided loyalties. Morris was never a revolutionary zealot; his penchant for law and order led him initially to plump for some kind of reconciliation with England. But the depredations of Parliament eventually proved too much, and Morris soon stood resolutely for the patriot cause. During the next several years he would become a man of many roles in the Revolution. Despite his self-professed "taste for pleasure," Morris was a dynamo of committee work, never flinching from long nights of tedious but necessary administrative scutwork in often atrocious conditions.

Morris spent the latter half of the 1770s as a delegate in New York's Provincial Congress and then as a New York representative to the Continental Congress. While serving in New York, he was appointed to a secret committee to coordinate with George Washington. The competent though sassy young man impressed Washington, who would later rely on Morris in Paris after others had judged him "counter-revolutionary."

In 1777 Morris and old friends John Jay and Robert Livingston drafted the New York Constitution. Morris grappled with Jay, a vehement anti-Catholic, on religious toleration, and argued alongside Jay for the inclusion of language encouraging the abolition of slavery in New York. (To their everlasting credit, Morris and Jay founded the New York Manumission Society, and New York got around to abolishing slavery in 1799.)

When he joined the Continen-

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tal Congress, Morris was appointed to report on Washington's winter encampment in Valley Forge. He discovered there a dispirited, shivering, half-starved, mutinous congregation, and proceeded to save the Revolution. Applying talents both financial and political, Morris overhauled the Continental Army's supply chain and financing, and on Washington's behalf floor-managed the passage of a bill guaranteeing the troops half-pay for seven years, without which they refused to fight.

Morris applied himself with gusto to the business of crafting law and devising strategy. But the aggressively eloquent young man won enemies even as he scored debate points. Transfixed by the heady chores of nation building, he neglected his constituency and was booted from Congress in the election of 1779. Shortly thereafter, at age 28, Morris shattered his leg in a carriage accident. The leg was amputated. Morris displayed his unflappably upbeat temperament and sly sense of humor in response to friends who assured him that the pain and struggle would build character: "you...point out so clearly the advantages of being without legs that I am tempted to part with the other," he wrote. Morris, who also had a maimed arm, seems never to have sulked. The peg did not appear to have cramped his style on the dance floor, or with the ladies.

Although out of office, Morris was not long out of power. The young financial wiz soon teamed with Robert Morris (no relation), the Warren Buffet (or perhaps Halliburton) of Colonial America, to whom almost all government financial power was ceded in his role as superintendent of the newly created Office of Finance. Morris and Morris labored to rescue the wrecked finances of the American Confederation by creating the Bank of North America, issuing sturdier currencies, and launching a variety of other precarious, Enron-esque financial schemes. Once again Morris may have helped rescue the Revolution from ruin, although he also managed to get on Washington's bad side when he fomented discontent among Army officers as part of a failed scheme to pass a national tax through Congress.

Morris hit his stride several years later as a member of the Pennsylvania delegation to the Constitutional Convention. He threw himself completely into debates over constitutional design, standing to speak more often than even James Madison, the document's chief theorist and architect. As he had when hashing out the New York Constitution, Morris argued for a strong executive, and this time he more or less won.

In debates over the rules of representation, Morris set forth arguments against slavery of powerful verbal fluency, moral clarity, and withering wit: "Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens and let them vote. Are they property? Why then is no other property included? The houses in [Philadelphia] are worth more than all the wretched slaves that cover the rice swamps of South Carolina....The admission of slaves into the representation when fairly explained comes to this: that the inhabitant of Georgia and South Carolina who goes to the coast of Africa and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections and damns them to the most cruel bondages, shall have more votes in a government instituted for the protection of the rights of mankind than the citizen of Pennsylvania or New Jersey who views with laudable horror so nefarious a practice."

Morris makes it impossible to lightly dismiss the grievous hypocrisy of the slaveholding Founders on grounds that "it was a different time." If they didn't know exactly what they

dangerously overweight.

Similarly, Spurlock asks a group of tourists to stand in front of the White House and recite the Pledge of Allegiance, which they have trouble doing accurately and in unison. But when he asks about the components of a Big Mac, one of them rattles off, "Two all-beef patties special sauce lettuce cheese pickles onions on a sesame seed bun." I can recite that list too, but I've never eaten a Big Mac.

Presumably these tests are meant to illustrate the "toxic food environment" that Yale obesity expert Kelly Brownell, who appears in the movie, blames for Americans' bulging bellies. Brownell's message—that we will continue getting fatter as long as food is cheap, tasty, readily available, and heavily promoted—is not exactly empowering. *Super Size Me* implicitly criticizes Jared Fogle, the formerly 425-pound star of Subway commercials, for offering impractical, simplistic weight loss tips. But what Fogle tells an overweight girl after a speech seems like good advice to me: "The world's not going to change. You have to change." ■

Senior Editor Jacob Sullum (jsullum@reason.com) is the author of Saying Yes: In Defense of Drug Use (Tarcher/Penguin), now out in paperback.

Super Size Me

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were doing, Morris made it abundantly plain. Morris often lost his arguments, as he lost this one, but he was tenacious in making whatever marginal improvements were possible.

For his widely recognized skill at articulate conciliation, Morris was chosen to compose the final draft of the Constitution. He substantially reworked and streamlined the document's final form. Constitutional scholars have Morris to thank or blame for many of the Constitution's constructions. He was accused of slipping a semicolon, and thus his nationalism, into the "general welfare" clause, allegedly to create the provision of the general welfare as a distinct power of the government apart from the enumerated mechanisms of finance. (It was excised.) His nationalism rings clearest, however, in his elegantly crafted preamble, which famously begins "We the people of the United States" rather than with the original roll call of states. Patrick Henry, for one, was incensed.

If Morris had then dropped dead at 35, we'd have to say he'd had a good run. But he lived to be 64. In the intervening years Morris made a fortune in business and went to Paris on behalf of Robert Morris and his monopoly on tobacco sales to the French. While he was there, his old friend, now president, George Washington appointed him ambassador to France. Sophisticated and clever, Morris was happily accepted into Parisian aristocratic circles. He flirted with Madame de Staël and conducted an intense affair with the Countess de Flahaut, whom he shared with Talleyrand, the impious, clubfooted bishop.

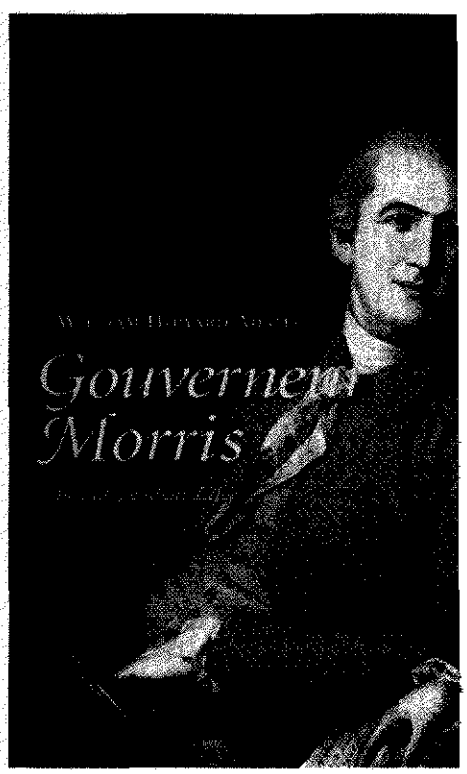
Having helped win one revolution, Morris had a front row seat for a second. This one he deplored. Stationed simultaneously in Paris, Morris and Thomas Jefferson shared the occasion to speculate on the prospects of French liberty. Jefferson, in the grip of visionary ideology, was naively hopeful. Morris, recognizing that France's genius for political theater far outran its cultural capital and political sense, rightly predicted a bloody, illiberal resolution. Morris did what he could to help the king keep it together, and when the heads started rolling, he stowed some high-born acquaintances in his apartments and bluffed out the bloodthirsty revolutionaries who soon came knocking. He set it all down in his Parisian journals, which are a treasure.

Clearly, Morris will pass no one's ideological purity test. That this is so clear is one of the benefits of the unclouded view of Morris afforded by these excellent biographies. Because both books are works of resuscitation, not of exaltation or debunking, we are able to see the Revolution more clearly than usual through the lens of Morris' life and work.

Morris shows us that winning wars is not just about being passionate or being right; it's also very much about coordination and money. Libertarians tend to eschew Hamilton and his Yankee ilk, like Morris, for dirtying their hands actually trying to erect the economic groundwork of the richest nation in the known universe. Morris demonstrated a keen awareness of the collective action problem inherent in a loose confederation. He worked mightily to make sure soldiers got paid, that pensions were assured, and that American credit did not collapse. In order to do this, he did indeed strengthen the American state. We can sketch alternate histories to our heart's content, but it is not clear that our cherished republic would exist but for Morris' labors.

Morris appears to have had immense integrity and an enormous capacity for kindness. Yet he had little time for Puritan morals. Morris sensibly assured Mme. de Flahaut, his soon-to-be amour, that "I never lost respect for those who consented to make me happy on the principles of affection." That is, "I'll respect you in the morning." Smooth? Yes. But he meant it.

Morris' reputational problem is undoubtedly connected to the fact that the debonair, funny, omnicompetent man does not fit our template of a Founder. He lacked that most ineffable of qualities: gravitas. The contrast between Morris and the tenured members of the national pantheon may be best exemplified



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by the (perhaps apocryphal) incident wherein a coltish Morris gives Gen. Washington, gravitas incarnate, a jocular slap on the back, only to be rebuked by a bone-chilling, imperious stare. Yet it is Morris more than Washington who is the model for the American mind. As with the epicurean, tech-dabbling Franklin, there is something distinctly modern in the urbane and ironic Morris that is absent in many of his revolutionary compatriots.

Morris was not impressed with the abstemious ethic of classical republican virtue whereby the best men are expected to bankrupt themselves for the sake of the commonweal. Echoing the logic of Bernard Mandeville and Adam Smith, Morris asked, "Would not as much good have followed from an industrious attention to his own affairs?" Want, he suggested, is no friend of virtue: "If I were to declare my serious opinion, it is that there is a lesser proportion of whores and rogues in coaches than out of them." Moreover, the "good life" really is part of a good life: "The goods of fortune are worth the attention of a man of understanding...because they are necessary to the gratification of certain wishes which every man ought to have."

Morris foresaw that American power would be economic power. As American commerce began to pick up pace, he observed with wonder the quantities of money rolling into the Treasury, which moved him to conjecture that "the proudest empire in Europe is but a bubble compared to what America *will* be, *must* be, in the course of two centuries—perhaps of one."

He was not only an architect of institutions. Morris also left an indelible mark on the city that would become the jewel in the crown of capitalism. Love it or loathe it, Morris laid out the grid pattern for Manhattan and was instrumental in the creation of the Erie Canal, which transformed New York City into the commercial capital of North America and helped align the loyalties of the frontier territories with the Northern states. Morris went so far as to claim that had the gods only known, instead of a temple atop Olympus, they would "have reared to commerce a golden throne on the granite rock of Manhattan."

Forgotten Founding Father Gouverneur Morris saw the pluralistic, commercial form our freedom would take, and he saw that it was good.

We live under a constitution shaped by Morris' smart pen. But in more ways than this, we live in Gouverneur Morris' America. The worldly patron Founder of cities, trade, materialism, wit, pleasure, and style, Morris stood athwart history and waved it in. He saw the pluralistic, commercial form our freedom would take, and he saw that it was good. Readers weary of churchy, censorious New Englanders and stiff-backed Virginians infatuated with their humid plantations, towering abstractions, and lofty but compromised ideals will find Morris' principled, jaunty cosmopolitanism a rush of fresh air. ■

Will Wilkinson (wwilkins@umd.edu) is a Ph.D. student in the Philosophy Department at the University of Maryland. He maintains a weblog at willwilkinson.net/flybottle.

Gouverneur Morris (cover)

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The strange history of war death imagery

Charles Paul Freund

THREE MONTHS AFTER the war began, a New York newspaper bitterly attacked the administration's handling of unpleasant military news. "Their 'information' is treacle for children," thundered the angry editorialist, who compared the military's growing edifice of information control to the work of Nazi propagandist Joseph Goebbels. Other publications agreed that war news was being "dry-cleaned" by the government, which had yet to release a single image of an American military death. Indeed, there were rumors that a paranoid White House was planting informants in newsrooms and even tapping reporters' phones. It was 1942.

You'll find that portrait of an earlier generation of wartime Americans, their press, and their government in George Roeder's invaluable study *The Censored War: American Visual Experience During World War Two* (1993). One lesson to be taken is that Americans don't entirely trust their state, even when it is engaged in an effort that most of them support. That is especially true when the state's effort is military, as the recent controversy concerning images of Iraq's flag-draped coffins—and thus the struggle over the control of war imagery—illustrates once again.

The struggle for war image control began when a camera was first aimed at soldiers in Crimea, but that struggle is hardly founded on the absolutes implied by arguments like the one over the war coffins. The simple version of this and similar debates—that the state must hide its dead or risk growing opposition to its war—is a misleading simplification of a complex phenomenon. Yet both the state, which wants to limit these images' exposure, and war critics, who want them disseminated, are acting as if the reaction to such images is Pavlovian.

The historic role of war imagery is actually filled with contradictions. The state doesn't always try to hide its war dead; sometimes it is anxious to display them. Viewers of such images are not always repelled or demoralized by them; they have had many other reactions, including an increased support for war. The press is not always anxious to reproduce such images for either sensational or political purposes; it may well prefer to ignore them entirely. The war images we see are not always documentary evidence of war's carnage; some famous images may well have been misidentified, and some photographers have even arranged and rearranged the dead like so many props. For that matter, images, however harrowing, are not necessarily more revealing of war's atrocities than words.

World War II, a singularly misperceived experience, offers telling illustrations of many of the complexities involving both the control of war images and the reaction to them. As Roeder recounts, for the first two years of that war there was not a single documentary image of American death released to the public. This was a continuation of the policy adopted during World War I, when the American government censored all such images throughout the conflict.

The reason Franklin Roosevelt followed Woodrow Wilson's censorship example, it appears, is that FDR was uncertain of continued public support, especially for the war in Europe. Until mid-1942, the war news was nearly all bad, and a significant number of Americans thought an overextended U.S. should have concentrated on Japan, which had attacked the country. Nearly a third of the populace favored making some accommodation with Nazi Germany and extricating the U.S. military from Europe. The administration feared that images of the war's dead would demoralize the country and further erode support for the war's broad strategy. War photographers (who, like war reporters, wore uniforms) often had to send their unexposed rolls of film to the Pentagon for processing.

By late 1942 the administration and the military had completely changed their minds. Americans, they decided, had by then become too complacent about the war. Much of the war news had been positive, and the government was worried about increasing work absenteeism. What Americans needed, thought the state, was a display of military sacrifice. So the Pentagon quickly released hundreds of images of dead soldiers to remind civilians that the war remained a deadly business still to be decided. As it happens, many publications refused to publish the images; their editors feared such pictures would "disturb" readers. But some of the country's largest-circulation periodicals, such as *Life*, did run them, and they were widely seen.

There is, of course, an apparent contradiction between these two approaches. If FDR's original view—that death images would demoralize the public—was valid, displaying

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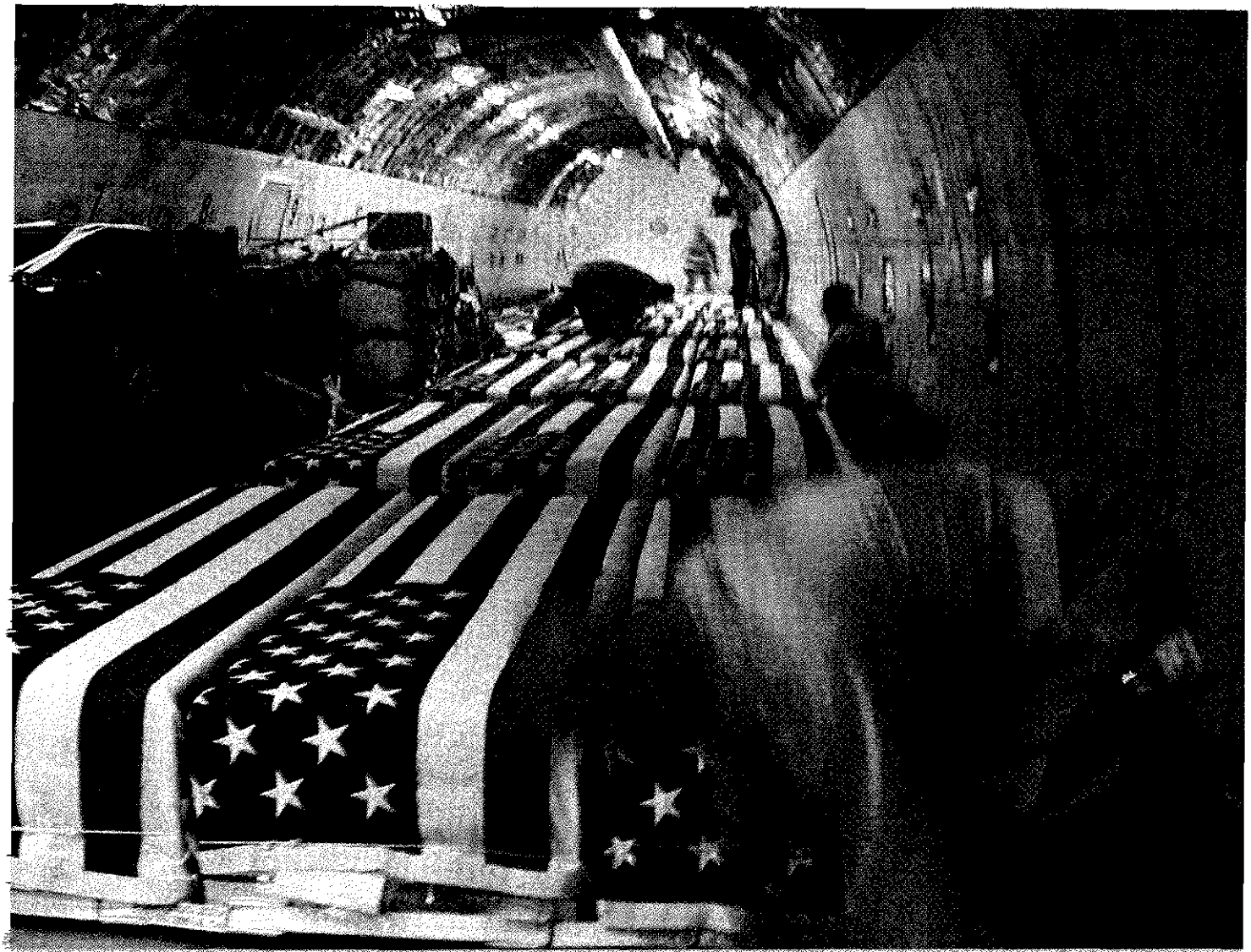

Flag-draped coffins return to U.S., Zuma Press.

them in the latter part of the war (when the vast majority of U.S. war deaths occurred) risked undermining the American military's demands for unconditional surrender, at least in Europe. If his later, revised view—that death images would increase public fervor—was correct, then displaying them in the first, dark months of the war might well have helped counteract the effect of so much negative military news. (After all, "noble sacrifice" against great odds was the underlying theme of many early Hollywood war movies.)

There is an obvious third proposition: Neither of these generalizations about the effect of death imagery was necessarily correct. While there is often a plain and unchanging personal meaning in such images of death, there is no inevitable political meaning in them; rather, their political meaning and impact can change according to their context. The most important factor in that context is probably not whether a given conflict appears to be going well but whether the viewer of such images believes the war's cause to be just and its pursuit purposeful. If you believe that about the Iraq war, then you probably interpret the coffin images a certain way; if you don't, you probably see a different picture.

Hiding such imagery, as many administrations have done, is in the end an act of self-defeating censorship, one that invites legitimate questions about what else the state might be hiding about the war and about the state's attitude toward the citizens it is sending into battle. At the same time, disseminating such images as an act of war criticism is reductionist and prone to backfire, because such an act seeks to impose a single political meaning—often involving victimhood or exploitation—on images whose meaning is fluid.

Whether such images portray honorable sacrifice or something very different depends on how the viewers perceive the war itself, and not, as some involved in this debate seem to believe, the other way around. ■

Charles Paul Freund (cpf@reason.com) is a **reason** *senior editor.*

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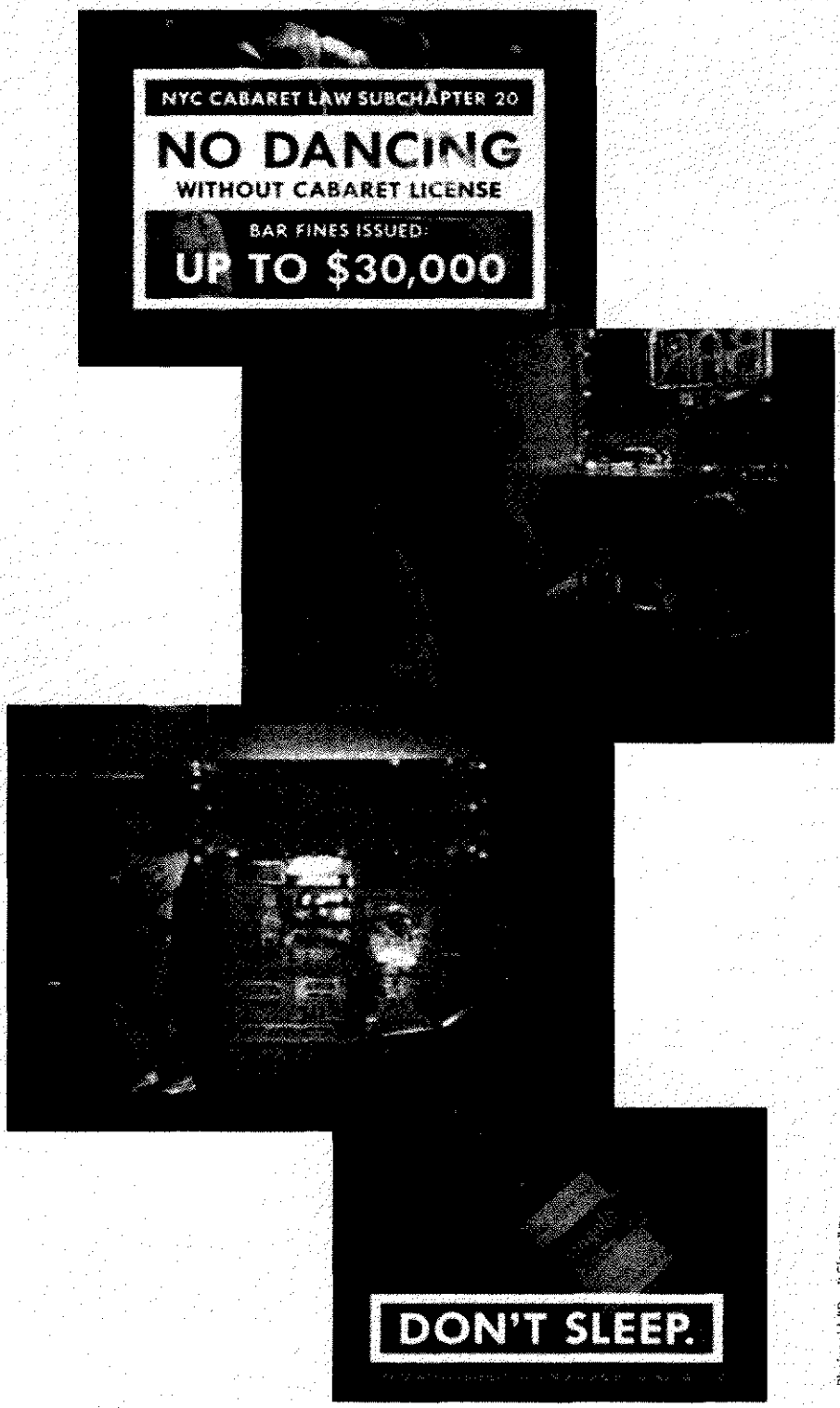
When Ads Campaign

Charles Paul Freund

MICHAEL BLOOMBERG, the mayor of New York City and the most prominent Puritan since Cotton Mather, is the unseen villain in a remarkable TV ad campaign for Rheingold Beer. These images are from "Cabaret," one of three 30-second spots that make up the beer's "Don't Sleep" campaign. According to the Rheingold Web site, the campaign challenges Bloomberg's "attempts to 'San Francisco-fy' the city," presumably by trying to file away New York's rough edges.

"Cabaret" features quick cuts of New Yorkers dancing freely on the sidewalks and in a bar despite the city's draconian dancing law. "Crate" addresses the city's bizarre policy of fining people who sit on upended milk crates. "Ashtray" features smokers who bring their own ashtrays into the city's now-smokeless bars and slam them down assertively. "This is New York," brags the Beat-like voice-over, "and we can't sleep 'til we take it back."

Bloomberg wasn't happy about the campaign, calling Rheingold "a company that walked out on this city 30 years ago." But as the New York *Daily News* remembered, Rheingold shut down its Brooklyn brewery in 1974 because it was then too broke to bottle its beer. Anyway, as Rheingold's CEO responded, the campaign is really "all about freedom of choice." You gotta problem with dat, mayor? ▮



Rheingold "Don't Sleep" TV.

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In the March 2004 issue of *Scientific American,* National Aeronautics and Space Administration global-warming expert James Hansen notes that **greenhouse gas emissions and global-warming projections are "consistently pessimistic."** Hansen suggests that projections do not take into account the lower carbon dioxide and methane emissions that have resulted from technological advancements. He explains that the lower carbon dioxide emissions result from increased energy efficiency following the energy crisis in the 1970s and the lower methane emissions, from technological changes in agriculture.

Hansen's concludes on an optimistic note, saying "the main elements [new technologies] required to halt climate change have come into being with remarkable rapidity." This statement would not have surprised economist Julian Simon. He saw the "ultimate resource" to be the human mind and believed it to be best motivated by market forces.

Because of a combination of market forces and technological innovations, we are not running out of natural resources. As a resource becomes more scarce, prices increase, thus encouraging development of cheaper alternatives and technological innovations. Just as fossil fuel replaced scarce whale oil, its use will be reduced by new technology and alternative fuel sources.

Market forces also cause economic growth, which in turn leads to environmental improvements. Put simply, poor people are willing to sacrifice clean water and air, healthy forests, and wildlife habitat for economic growth. But as their incomes rise above subsistence, "economic growth helps to undo the damage done in earlier years," says economist Bruce Yandle. "If economic growth is good for the environment, policies that stimulate growth ought to be good for the environment."

The link between greenhouse gas emissions and economic prosperity is no different. Using data from the United States, Professor Robert McCormick finds that "higher GDP reduces total net [greenhouse gas] emissions."

He goes a step further by performing the complex task of estimating net U.S. carbon emissions. This requires subtracting carbon sequestration (long-term storage of carbon in soil and water) from carbon emissions. Think of it this way: when you build a house, the wood in it stores carbon. In a poor country that wood would have been burned to cook supper or to provide heat, thus releasing carbon into the atmosphere. McCormick shows that **economic growth in the United States has increased carbon sequestration in many ways**, including improved methods of storing waste, increased forest coverage, and greater agricultural productivity that reduces the acreage of cultivated land.

Because rich economies sequester more carbon than poor ones, stored carbon must be subtracted from emissions to determine an economy's net addition to greenhouse gas emissions. McCormick's data show that "rich countries take more carbon out of the air than poorer ones" and that "the growth rate of net carbon emission per person will soon be negative in the United States." Put differently—richer may well be cooler.

Global-warming policy analysts agree that greenhouse gas regulations such as those proposed at Kyoto would have negative impacts on the economy. Therefore, as McCormick warns, we should take great care that regulations in the name of global warming "not kill the goose that lays the golden eggs."

—*Terry L. Anderson*

Terry L. Anderson is the Martin and Illie Anderson Senior Fellow at the Hoover Institution and the editor of the forthcoming book You Have to Admit It's Getting Better: From Economic Prosperity to Environmental Quality *(Hoover Institution Press, 2004).*

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